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THE NATION, AND LOUISIANA.

SPEECH

OF

HON. ROSCOE CONKLING,

OF NEW YORK,

IN THE

SENATE OF THE UNITED STATES,

JANUARY 28 AND 29, 1875.

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SPEECH

OF

HON. ROSCOE CONKLING.

The Senate having under consideration the following resolution, introduced by Mr. SCHURZ:

Resolved, That the Committee on the Judiciary be instructed to inquire what legislation by Congress is necessary to secure to the people of the State of Louisiana their rights of self-government under the Constitution, and to report with the least possible delay by bill or otherwise—

Mr. CONKLING said:

Mr. PRESIDENT: My own judgment of the fitness of things and of the value of time in this brief and fast-ebbing session, would not lead me into this so-called debate. Certainly no value placed by myself on any opinion of my own would move me to consume an hour now, with nothing before the Senate which discussion can affect. But when days and weeks have been devoted to serious and exciting topics, when many Senators have expressed their views at large,—sometimes with reiteration, and no sign of abatement can be seen, a time comes when silence may not have even the merit of staunching the flow of words. Like a piece on the stage, to borrow a favorite figure of the Senator from Ohio, [Mr. THURMAN,] the drama which entertains the Senate now must have its run; and the appearance of a tiresome actor may abridge the period which must elapse before the managers will try the public taste with something else.

The presidential campaign of 1876 has been formally opened. It has been opened in the Senate, and legislation waits. It has been opened with somewhat of dramatic effect, and much of sensational awfulness. The Senator from Ohio, the leader of the opposition, came in from the holiday vacation armed with a resolution of inquiry leveled at the President of the United States. Its terms were such as to imply that the Chief Magistrate had done something to forfeit the ancient usage of decorum which our fathers and their children were wont to observe when putting questions to the head of the executive department. Assuming that the brusqueness of the resolve was inadvertent, I suggested that it be changed to the customary form. The demeanor which this suggestion met, like a signal-gun, told us in an instant that we were to be charged all along the line. It was not in order to consider the resolution except by unanimous consent; but no Senator objected. Every supporter of the Administration was ready to vote for it on the spot. But immediate action, and immediate response to the inquiry, was not the end aimed at. Sensation and prejudgment were sought, and so denunciation began, and days were worn out with accusations and assertions which time has already disproved. This was not the work of those who support the Administration. They waged no debate. They did expostulate against prejudgment. The Senator from Ohio exclaimed yesterday that no one, while his resolution was pending, justified the acts at New Orleans. No; the majority

waited for the facts while the Senator and his associates wasted days in assertion. When from Tuesday morning till Friday evening the Senate had been thus detained, the mover of the resolution proposed to postpone it until the succeeding Monday, that hindering declamation might still go on; and then it was that we on this side insisted that the resolution should be passed. Such procrastination, in a political maneuver, would have been maladroit in us. It was harmless to our friends on the other side, because they have a press so facile, so convenient, so subserviently loyal to its party. Wherever newspapers raise hue and cry for the democracy it has been published that the republican majority of the Senate resisted the resolution, and strove to defer and stifle the inquiry. It has been said that fearing the truth, we defeated the resolution altogether—ardent admirers of the Senator do not yet believe that it has ever been adopted. Let me show you an example of the falsehoods which nourish the faith of those who assail and accuse Congress and all its works. Here in "The Daily Tribune" of Mobile, of January 7, 1875, is an editorial entitled "A Blushing Shame." It thus descants:

Mr. THURMAN deserves the thanks of the entire South for his manly conduct in pressing his resolution upon the Senate. He did all he could. His resolution was just and timely, but these qualities were the very ones that secured its defeat. The radicals will not permit inquiry which will develop their infamous plots and outrages. They prefer darkness, and darkness they intend to have, at the expense of every principle of honor and justice.

One of those who took part in prejudging the case, and condemning the President in advance, was the Senator from Delaware, [Mr. BAYARD.] Giving us much of weighty monition, he did not forget the amendment to make the resolution conform to the custom in such cases. He said:

Mr. President, in my judgment the amendment proposed by the honorable Senator from New York to this resolution is quite out of place and unnecessary.

Proceeding, he alluded to the fact that his name had been mentioned among those connected with resolutions, which, asking questions of the President, had contained the words, "if in his judgment not incompatible with the public interest." Repudiating the reference thus made to him, the Senator proceeded to mention the supposed occasion, and to explain the use there of the usual words. He said, speaking of his resolution:

I was glad to have it accepted in any form, even with the entirely superfluous, and, as I thought then, improper addition which was put upon it. I made no objection to it. In that way alone the resolution, as amended by the Senator from New York, came before the Senate.

"Entirely superfluous and as I thought then improper addition"—that is very explicit, but the Senator was in error I think. It was the quaint confession of another public teacher that his fore-sight had never been so good as his hind-sight.

The foresight of the Senator on the 1st of March, 1873, could not have been as he now remembers it.

Here is the record of that day. I read:

Mr. BAYARD offered the following resolution:

"*Resolved*, That the President be, and hereby is, requested to" inform the Senate whether any commissioned officer of the United States Army—

And so on—the remainder of the resolution need not be read.

There being no objection, the Senate proceeded to consider the resolution.

Mr. CONKLING. I suggest to the Senator from Delaware that the resolution ought at least to conform to the usual form; and therefore I move to insert the words, "if in his judgment not incompatible with the public interests."

Mr. BAYARD. Certainly.

Mr. THURMAN. I should like to know what public interest this information can possibly be incompatible with.

Mr. CONKLING. I do not suppose it would be incompatible with any public interest; but we have adopted that form in all cases because we cannot judge whether it might or might not be.

Mr. BAYARD. Certainly; I agree with the Senator.—*Congressional Globe*, part 3, third session Forty-second Congress, 1872-'73, page 2082.

It would seem then, that with attention called clearly to the point, the Senator fully agreed with me less than two years ago. Times change however and men change with them.

Returning now to the present occasion, we were not permitted to send the resolution to the President until after it had become notorious that a communication from him would anticipate our action if our inquiry was longer held back. An answer came promptly—a patriotic, frank, and able message, which lies on the table; but denunciation still goes on, under guise of a resolution offered by the Senator from Missouri, [Mr. SCHURZ,] which plainly declares on its face that its mover, and those acting with him, have no legislation to suggest touching Louisiana, but require the advice and instruction of one of the committees of the Senate to tell them what to do.

I say denunciation goes on. The honorable Senator from Ohio yesterday for four hours engaged the attention of the Senate. What was his speech? I mean no discourtesy when I say it was a carping criticism. A criticism of whom and of what? A criticism on lawbreakers, on men moving about as walking monuments of the mercy and magnanimity of the American people, and ever blustering about their rights, and by deeds of violence keeping the South in unceasing turmoil? A criticism of acts which have tarnished the escutcheon of the nation, and affrighted humanity? No, sir; even the bloody revolt of the 14th of last September, when more than fifty men were shot down in New Orleans, received no word of reprehension. A criticism of the constituted authorities of the country, legislative, executive, and judicial. The honorable Senator began by reading an extract from a speech of his own made in 1871, in which he branded the acts of the national Congress. He continued by denouncing the acts of the President of the United States, of the State executive, and of the judiciary of the State and of the nation.

The Senator from Ohio is he above others, to whom the nation looks to know and to state, if not to originate, the policy of his party—to set forth what his party means to do, and what should be done. We heard him through a carefully elaborated speech. Did the Senate learn anything of the policy of the democratic party? Did we hear of any practical measure of legislation in respect of the southern question? Did the Senator from Ohio tell us what to do with the imbroglio in Louisiana? No, sir. There is a wide difference between a critic and an architect. It is easier to pull down than to build up. And the speech of the Senator confirms the belief that the policy of the democratic party upon this question, as upon the financial problem, and upon every great question, consists only in denouncing whatever is done by those charged with public affairs. The statesmanship and the policy of that party seems only to rise to the height of abusing its adversaries.

One passage, apparently a passage less studied than some others, in the speech of the honorable Senator, was pregnant with disclosure. He said in effect, I do not quote his words, "If such be the condition of the South it is time that the party which through the war and since the war has guided affairs should give way, and let another party come in." Ah, Mr. President, there is the key to the political

secrets of the managers of the South and of the North ever since fighting ceased. There is the clew which unravels the web; there is the gospel of party as whispered and muttered from the beginning of the effort to reconstruct the South. Make reconstruction a miscarriage, refuse to aid it in good faith, thwart it, baffle it, make the worst of it, keep up unending agitation, disturb, foment, revolutionize, and the time will come when the country, wearied and worn with commotion, will accept anything for a change!

The honorable Senator from Pennsylvania [Mr. SCOTT] knows better than I do how true this is. Witness after witness before the committee of which he was chairman, explained it in detail. When fighting ceased, every man in the South could vote. The right of self-government and the ballot were as free and universal in every Southern State as in the commonwealth of Massachusetts. No man was denied the right to vote, not even Jefferson Davis. Did they exercise it in good faith? No, sir. On the contrary social ostracism was brought to bear to deter men from accepting public office, and from aiding to raise again the fabric of government. The party, managed by those who had received the nation's forgiveness, refused to set candidates in the field in some instances; refused to vote for or against measures submitted to them; refused by every negative method to accept and help on the efforts of Congress to rebuild and rehabilitate the South; refused at all times cordial compliance with the new amendments of the Constitution and laws made to effectuate them; and now we are taunted by their leader on this floor with the partial success of their sulky and sinister designs. The plan was to abandon the beginnings of reconstruction of the Southern State governments to incompetent and unfit hands—the hope was that if the ignorant, the mercenary, and the unpopular, were left to act in local affairs under the new order of things, and paraded as the apostles of reconstruction and the representatives of the national legislation, the whole system would become odious, and would fail.

Such were the auspices under which reconstruction was launched, and the real obstacle it has encountered from the outset has been the deep-seated obstinacy of those who have sacrificed their own true interest, and the peace and prosperity of their States, to unquenched resentment and prejudice. Hatred of suffrage and equal rights for black men, has ruled the hour; had those who received the clemency of the nation accepted it in good faith, this Chamber would not resound to-day with the discussion which now proceeds.

The honorable Senator from Ohio has exhumed the election of 1872 and made that a background against which to set off the occurrence of three weeks ago in New Orleans. What have the two events to do with each other? Who planned the election in Louisiana of 1872? Who turned it into a disgraceful tangle of fraud and force? Warmoth. Who was Warmoth? The leader of the opposition to the national Administration—the charioteer of the grand combination troupe of liberals and democrats who attempted to carry Louisiana and enough other States to make Mr. Greeley President. And now the republican party is belabored with what Warmoth and his desperate accomplices did.

The election of 1872 in Louisiana was an organized fraud. Hear what was said of it by the committee of this body:

> The testimony shows that leading and sagacious politicians of the State, who were acting with Warmoth, entertained the opinion before the election that Warmoth's control of the election machinery was equivalent to twenty thousand votes; and we are satisfied, by the testimony, that this opinion was well founded. We believe that had registration been accessible to all, and polling-places been prop-

erly established, the result of the election would have been entirely different. And although we cannot approve of such a canvass as that made by the Lynch board, who seem to have acted upon the principle of "fighting the devil with fire," and circumventing fraud by fraud, and cannot say that Kellogg's government was elected, nevertheless we believe that Kellogg's government was defeated, and the popular voice reversed, by the fraudulent manipulation of the election.

If the Senate should be inclined not to go behind the official returns of the election, then the McEnery government and legislature must be recognized as the lawful government of the State, and McMillen, if regularly elected by that legislature, should be seated in the Senate in place of Kellogg. *But your committee believe that this would be recognizing a government based upon fraud, in defiance of the wishes and intention of the voters of that State.*

Yes, sir, your committee believe that recognizing McEnery "would be recognizing a government based upon fraud, in defiance of the wishes and intentions of the voters of that State." And yet the honorable Senator from Ohio comes now to complain that McEnery was not installed under color of this detestable fraud, and was not recognized by the President. The result of that election was contested. It was suffocated by fraud, and the result beclouded in doubt. In every forum in which the result has been searched for, the decision has been against McEnery. The constitution of Louisiana provided modes in which the title of those claiming offices under the election could be tested. Some of these modes were applied. The question of Kellogg's election was repeatedly presented to the State courts of Louisiana. The decision in every instance was against McEnery. The question was presented to the House of Representatives of the United States, and the House decided against McEnery. The question was presented to the Senate of the United States, and the committee of the Senate, with only one dissent, decided against McEnery. The question was presented to the President of the United States; he decided it against McEnery; but he sent a message to Congress saying in effect, "I have made the best disposition I could of this vexed question; I invite you to reverse my judgment if you find the truth will warrant it;" and Congress by non-action and acquiescence affirmed the judgment of the President. Despite all these adjudications, defiance, revolution, broil festering to rebellion, open refusal to submit to authority and law, goes on in Louisiana; and the Senator from Ohio comes with a special plea, and going back to the old jungle of the election of 1872, he galvanizes an effete question, and seeks to cloak or extenuate the unbridled lawlessness which has never desisted, and never been awed except by power.

The Senator made the customary onslaught on Judge Durell, a judge appointed, not by President Grant, but by Pesident Lincoln. This judge made an order in New Orleans, the Senator says bad for a variety of reasons, one of which was that "it had no seal," as if the President in Washington knew whether the order had a seal or not. Before any such order was made, the President, through the proper law officer, had telegraphed to the marshal that the decrees of the Federal courts must be obeyed; and, says the astute if not charitable Senator, how came the President through the Department of Justice to send a telegram to Louisiana that the decrees of courts must be obeyed, before this order had been issued, and therefore, before it had been resisted? The Chief Magistrate of the United States has often answered the question. He answers it on the first page of his recent message which the Senator from Ohio must have studied, because he complains that he could not find in it everything he wanted. The Pesident says:

To enable the court to inquire as to the truth of these allegations—

Referring to the suit then pending before Judge Durell—

a temporary restraining order was issued against the defendants, which was at once wholly disregarded and treated with contempt by those to whom it was directed.

The occurrence here stated, had preceded the telegram to which the Senator calls attention. Again, the President says that the orders to which reference has been made have been held to be illegal, but—

while they are so held and considered, it is not to be forgotten that the mandates of his court had been contemptuously defied, and they were made while wild scenes of anarchy were sweeping away all restraint of law and order.

* * * * * * *

Whatever may be said or thought of those matters, it was only made known to me that process of the United States court was resisted.

There is the answer to the question, so unwarrantably suggestive as it was something wrong and hidden on the part of the President. There is a plain and adequate answer. The President, on notice of resistance of judicial process, telegraphed that the decrees of courts must be respected and obeyed. What else could he say; what else could be said in the presence of the facts by any Chief Magistrate who reverenced his oath of office?

Mr. President, this debate revolves on one pivot—an occurrence on the 4th of January in a room in a distant city. In a room in a hotel in the city of New Orleans—which hotel is leased this year to the governor, the lieutenant-governor, and the speaker, for public use—a transaction took place which has ostensibly incited all the speeches to which we have lately listened. Speaking of it, I say first, that no responsibility for the affair in New Orleans on the 4th of January, touches the President of the United States. No blame for what was done or said can be laid at his door. The first information he received was simultaneous with that of other citizens. The newspapers of the following day were his first informants. He had no expectation or apprehension in advance. If there were those in Washington, or nearer Washington than the limits of Louisiana, who had notice that revolution was to be attempted on the 4th of January, the President of the United States was not one of them. He therefore had made no provision for such a contingency, and no preparation for the tidings of the event. Nearly a fortnight previously, and on the 24th of December, the President had requested General Sheridan to make a tour of observation, not in Louisiana alone, but in the Southern States—several States were named, and all were included. No personal conference was held between the President and General Sheridan. The general was in Chicago, and the communication was in writing. It was forwarded to General Sherman, the General of the Army. In it was suggested a conference with General McDowell. The substance of the communication is this:

WAR DEPARTMENT,
Washington City, December 24, 1874.

General P. H. SHERIDAN,
Chicago, Ill.:

GENERAL: The President sent for me this morning, and desires me to say to you that he wishes you to visit the States of Louisiana and Mississippi, and especially New Orleans, in Louisiana, and Vicksburgh and Jackson, in Mississippi, and ascertain for yourself, and for his information, the general condition of matters in those localities. You need not confine your visit to the States of Louisiana and Mississippi, and may extend your trip to other States, Alabama, &c., if you see proper; nor need you confine your visit, in the States of Louisiana and Mississippi, to the places named. What the President desires is to ascertain the true condition of affairs, and to receive such suggestions from you as you may deem advisable and judicious.

Permission was given to assume command, should he find it well at any time to do so.

There is the official statement, giving the truth and the whole truth of the mission on which General Sheridan was sent. The Senator from Delaware [Mr. BAYARD] referring to the presence of General Sheridan in Louisiana was pleased to utter this language:

In the midst of this excitement, in the midst of this blow at the very heart of popular government, who has he selected to preside over the affairs of that State? Lieutenant-General Philip Sheridan, sent by him to New Orleans secretly, not by public order known to the people.

Now observe:

He is sent down to dragoon the people of Louisiana into slavish, fearful, cringing, un-American obedience to his will and pleasure.

Such is the comment of a Senator on such an act of the Chief Magistrate, and of the Lieutenant-General of the Army. I commit to the record, and to the calm scrutiny of after times, the action of these officials, and the comment and statement of the Senator. Let the truth and the accusation stand side by side.

When General Sheridan was thus invited to visit the South the President had been compelled day after day to listen to wails of woe and entreaties for protection to which no man could be deaf, to which no Chief Magistrate would dare be indifferent. These cries for help did not relate to the election—that had passed. They did not concern the ambition of candidates; they concerned the lives, the homes, and the property of men, women, and children, who had never been false to their flag, and who, under the shadow of that flag, were hunted down as if they were wild beasts. These supplications summoned the Chief Magistrate to his feet; they summoned him to bestir himself, to inquire, to find out, to see to it that he kept the oath, sworn before the American people, which binds him to see that the laws are faithfully executed.

One of these warnings had reached him but three days before. It came from one who for twenty years had been a resident of Shreveport, for twenty-eight years a resident of the South. It came from a judicial officer, not appointed by the President, but appointed by the court; an officer who stated that he had read every word of his communication to the general commanding the department, and that the general confirmed it all. I will read some passages of this communication; it is dated December 16, 1874:

It is scarcely too much to say that the white voters of each parish north of Red River constituted an armed conspiracy, with the scarcely disguised purpose of carrying the election at all events—by threats, intimidation, and fraud, if possible, and by violence if necessary, all of which, first and last, were used freely.

The scheme here was to expel from the country the republican leaders, and then to frighten the negroes into acquiescence with their wishes; and this scheme was pursued to the end, with this modification, that after the arrival of troops the expelled leaders returned, but did not dare to go out of Shreveport, and did not dare to mingle freely with the people or to express publicly their sentiments.

The whites in all this portion of the State were united upon this programme almost to a man. This unanimity did not result all from choice, but so formidable had the organizanion become by August that even those who disapproved no longer dared to resist, even passively, and took shelter in the white party.

* * * * * * *

The Coushatta affair, occurring in the last days of July, and in the guilt of which we believe from our present knowledge not less than two hundred whites participated, more or less proximately, seemed to serve them as an incentive to closer union and more rigorous action. A very large number, scattered up and down the river from Shreveport to Natchitoches, seeking immunity from their guilt in the destruction of all law and public order, redoubled their efforts to terrorize the blacks and to annihilate all opposition.

Perhaps I cannot give you in few words a better idea of the ascendant arrogance and intolerance of the white leaders, than to say that the Shreveport Times newspaper—the leading exponent of the principles of the party in the State—boldly and unqualifiedly justified the Coushatta assassination on the sole ground of political necessity.

The orators of the party did substantially the same thing during the canvass, and the less prudent speak of it to this day as a good thing. Even Governor McEnery, in a speech in this place, as I am well informed, openly advocated the lynching of one of the republican leaders residing here, and a man of good character.

* * * * * * *

The whites are now driving the freedmen from their homes, naked and penniless, to endure the severities of winter as best they may. This very evening, and since I commenced this letter, a colored man, of honest and intelligent expression, comes in and tells me that last night about nine o'clock his employer, a white man, (well known to me,) by force (displaying a pistol and threatening to use it) put him and his wife and three helpless children out of their house to spend the night, as best they might, in the public highway, which they did under the open canopy of heaven; and what may be put down as a special aggravation of the offense is, that two of the children were ill and taking medicine, and one of them was so ill that it was not expected to survive. These people (turned out) *were partners in the crop which they had raised on the lands of the man who turned them out, and the crop had not yet been divided, and is all in the possession of the land-owner who turned them out.* This man had voted the republican ticket at the late election.

This is only one case in many coming to my knowledge daily. A few days ago complaint was made before me against seven white men in the adjoining parish of De Soto, charging them with conspiring to plunder, rob, and murder one poor defenseless old negro by the name of John Allston, and an extensive and full inquiry into the matter revealed the fact that the *charge was well laid* for they in fact not only plundered him and his family, but murdered the old man outright.

These people are systematically intimidated, brow-beaten, personally maltreated, cheated of their earnings, cheated of their suffrage, driven from their homes in penury to endure the inclemency of winter, and cheated of their rights to vindicate themselves before the courts. In simple truth they no longer have any rights which the whites voluntary respect, or which they have themselves the means or ability to make them respect.

* * * * * * *

So numerous and wholesale are the offenses of the whites against these defenseless creatures, that I almost hesitate to name approximately the number of persons subject to arrest and punishment for aggravated violation of the enforcement and Ku-Klux acts, within fifty miles of this place. To be entirely safe, I will put it at two hundred and fifty.

Sir, it was when so called to make inquiry, that the President requested the Lieutenant-General to repair to the South and observe and report its condition. It was after such representations made not only by a United States commissioner, but by many citizens and officials, that it was determined to send a man not likely to be deceived to become an eye-witness of the situation.

Calling attention to the President's freedom from all privity or relationship with the recent doings in New Orleans, I ask the Senate to consider how provident, discreet, and mild it was to send to a disturbed region a distinguished and trusted officer whose observation would be valuable, and whose presence might at the same time have a restraining influence on the lawless, and the violent.

Attempts have been made to adduce something unfavorable to the President from the fact that a few soldiers have for some time been stationed in Louisiana. The presence of the small force quartered there, was twice lawful and twice right. It was right and lawful, first, because our slender military establishment must be somewhere; our soldiers must be stationed about in the States and Territories; and, wherever they are, their right is too clear to be questioned. But, again, troops had been sent to New Orleans on the 14th of September, on regular requisition from the governor, when organized revolt had seized the government and the archives of Louisiana, overpowered all State authority, and driven the officers of the State fugitives to an edifice within the sole jurisdiction of the United States.

The advent of a detachment of troops, had, it is true, curbed the career of the revolt; but New Orleans still remained a seething cauldron of disorder, and to have ordered the soldiers away where they

were not needed while yet the only half-stifled voice of revolution was audible, would have been a crime possible only with a President in actual connivance with violence and treason. Can it be seriously contended that since September the President should have ordered all troops to leave Louisiana?

What would George Washington have said to ordering troops away from New Orleans with the air murky with threatened outbreaks as Sheridan and all others have described it, and locating them in some other region where no pretense of need of their presence could be made? This question was presented to Washington, presented to him in less vivid colors, after four counties in Western Pennsylvania had resisted a tax on whisky. An inspector and a surveyor had been assaulted, some damage had been done to property, nothing so formidable had been done or threatened as was actually done in Louisiana, and Washington ordered out and marched into Pennsylvania fifteen thousand men, going into the field himself. Order was soon enforced. "The revolt was abandoned"—to employ a phrase current here when speaking of Louisiana,—the revolt was abandoned; there was an end of it, in all but lurking and muttered discontent. But still soldiers in great numbers continued to tread the soil of Pennsylvania embodied as an army. They were three months' men and their term of enlistment was near expiring at the time Washington wrote the words to which I shall ask you to listen. These soldiers had been called suddenly and unexpectedly from their homes, and every consideration save only the supreme public good, urged their return the moment actual violence and resistance ceased. All this was seen, and heard, and felt. What said Washington, then Chief Magistrate of the Republic? Alluding to the fact that a spirit of discontent still lurked in the State of Pennsylvania, alluding to the danger that it might again break out in breaches of the peace, addressing the two Houses of Congress, Washington said:

> Had there been room for a persuasion that the laws were secure from obstruction; that the civil magistrate was able to bring to justice such of the most culpable, as have not embraced the proffered terms of amnesty, and may be deemed fit objects of example; that the friends of peace and good government were not in need of that aid and countenance, which they ought always to receive, and I trust ever will receive, against the vicious and turbulent, I should have caught with avidity the opportunity of restoring the militia to their families and homes. But succeeding intelligence has tended to manifest the necessity of what has been done; it being now confessed, by those who were not inclined to exaggerate the ill conduct of the insurgents, that their malevolence was not pointed merely to a particular law, but that a spirit inimical to all order has actuated many of the offenders. If the state of things had afforded reason for the continuance of my presence with the Army, it would not have been withholden; but, every appearance assuring such an issue as will redound to the reputation and strength of the United States, I have judged it most proper to resume my duties at the seat of Government, leaving the chief command with the governor of Virginia.
>
> Still, however, as it is probable that, in a commotion like the present, whatsoever may be the pretense, the purposes of mischief and revenge may not be laid aside; the stationing of a small force for a certain period in the four western counties of Pennsylvania, will be indispensable, whether we contemplate the situation of those who are connected with the execution of the laws, or of others who may have exposed themselves by an honorable attachment to them.—*Spark's Writings of Washington*, volume 12, pages 48 and 49.

Mr. CONKLING. There is an opinion of Washington of the propriety of continuing troops in the theater of a chastised revolt, after it is apparently over. It is easy to apply the opinion of Washington to the case in hand, a case much stronger than that which addressed itself to him.

President Grant thus states the present case in this particular:

> Troops had been sent to the State—

I read from his message of the 13th instant—

under this requisition of the governor, and as other disturbances seemed imminent they were allowed to remain there to render the executive such aid as might become necessary to enforce the laws of the State, and repress the continued violence which seemed inevitable the moment Federal support should be withdrawn.

It is to be remembered that in this instance the insurgents, to quell whom the troops were ordered to New Orleans, had never to the 4th of January, have never to this moment, laid down their own arms, or given up the arms which they seized from the State of Louisiana. I heard a Senator apply the words "pitiful plea," if I remember aright, to anything to be said touching this retention of arms, and the refusal to surrender them, by the insurgents of September 14. Nevertheless I remind the Senate that although the President on the 14th of September by proclamation called on the insurgents at New Orleans to disperse within five days, and to lay down their arms, and return to their homes, now after more than three months have elapsed, they stand still defying the national authority. Speaking upon information received from the Senator from Louisiana, [Mr. WEST,] I say that "the State arms taken possession of by white-leaguers and not yet returned are 2 mountain howitzers, 624 Springfield breech-loading rifles, 301 Winchester rifles, 664 Enfield rifles, 93 Spencer carbines, and 1,590 bayonets. They are State arms, and those men carry them to-day, and are in rebellion against the Executive proclamation to lay them down."

Standing at the bar of the American people, a tribunal too great, too virtuous, too intelligent, too brave, to be meanly or passionately unjust, the Chief Magistrate needs no labored defense for leaving soldiers of the United States to remain in Louisiana, whither they had been so recently summoned to protect life and law against a plot so bloody and audacious, a plot surrendered in a spirit so implacable and defiant.

Want of knowledge, then, of the plans for the 4th of January, the circumstances explaining the presence of troops, and explaining the personal presence of General Sheridan, put the President beyond all privity with the affair at the State-house. This full exoneration appears from the message on our table, and from the official documents which bear it out. But forty-eight hours before it came, the honorable Senator from Missouri, [Mr. SCHURZ,] telling us that he intended to speak with calmness and impartiality, informed the country that he already possessed all the information useful in forming a judgment, and then he proceeded to arraign and bitterly to reflect upon the President as the doer of the deed in Louisiana on the 4th of January—the deed, as the Senator from Missouri set it forth in the prismatic colors of fancy. Lest injustice be done to the Senator, I read from his speech:

Mr. SCHURZ. Mr. President, I beg the Senate to believe me when I say that I approach this subject in no partisan spirit.

* * * * * * *

I have formed my opinions with deliberation and impartiality, and I shall endeavor to express them in the calmest and most temperate language at my command

* * * * * * *

In the debates of last week it was frequently said that no expression of opinion upon that occurrence would be quite legitimate until an official report setting forth all the details of fact should be before us. I do not quite think so. All the important circumstances of the case have come to our knowledge through a multitude of concurrent statements, among them an elaborate dispatch of General Sheridan, statements from Mr. Kellogg and Mr. Wiltz, and numerous reports in the newspapers of the country, all agreeing upon the essential points. I believe the additional details which still can be furnished will not change the aspect of the case as to its real significance.

The Senator having thus qualified himself to speak at once as an expert, and as one too serene to be prejudiced, proceeded thus "to educate the country"—another Senator said the object of this debate was "to educate the country," and I judge it was in that view that it pleased the honorable Senator from Missouri to utter himself thus:

It is said that trouble was threatening between contending parties in Louisiana. Suppose that had been so; but that is not the question. The question is, where is the law from which the National Government, in case of threatening trouble in a State, derives its power to invade the legislative body of that State by armed force, and to drag out persons seated there as members that others may take their places? Were is that law, I ask? You will search the Constitution, you will search the statutes in vain.

And again:

We have an act before us indicating a spirit in our Government—

That is not the government of Louisiana—

in our Government which either ignores the Constitution and the laws, or so interprets them that they cease to be the safeguard of the independence of legislation and of the rights and liberties of our people. And that spirit shows itself in a shape more alarming still in the instrument the Executive has chosen to execute his behests.

Such, Mr. President, is "the calmest and most temperate language" of a Senator, who, standing on the ashes of human ambition, and placidly contemplating the shortcomings and backslidings of a nation which he tells us is "on the downward slope," feels himself called upon and fitted in advance of the evidence, to weigh in exact scales with unfevered hand the motives and the acts of others charged with great and onerous trusts. The meanest culprit charged with crime, be it petty or enormous, must be heard before he can be condemned, and a presumption of innocence acquits him till he is proven guilty; but for an American President, in the American Senate, there is neither hearing nor presumption. Such is the passion and remorselessness of party, such the bitterness of man!

Mr. President, General Sheridan is equally undeserving of praise or blame for the doings in New Orleans on the 4th of January. He was not even a spectator of the drama in any of its parts. He was, it is true, personally present in New Orleans, and at half after nine o'clock in the evening, hours after the affair had ended, he assumed the command which alone gave him any more control than any other wayfarer in the streets. He states this fact himself; but with that innate heroism which will be worn as one of the brightest trophies of the nation when his traducers are forgotten, he adds that he is willing to be held responsible for what others did to preserve the peace. He offered himself as a victim to a storm in which older men, not trained to arms alone, but to the law, had lost their feet. Not being however within the law of agency which enables a principal to affirm the act of his agent, Sheridan cannot, nor will the nation let him, make himself responsible for acts which he did not and could not do. He sent to his superior, not to us, or to the public, dispatches which have been widely misread and twisted from their meaning; but Sheridan has not yet to learn that one who stands as he does in the glare of the public eye, will be misunderstood and misrepresented.

When conflagration had swept the proudest city of the West; when homes, and stately edifices, and marble blocks, lay in the ashes of a fire which devoured iron and stone;—when relics and household gods, the cherished store of families, were exposed in the street, there was a dissatisfied minority impatient of the forms of law, who in that sea of woe and flame, followed their opportunity as the shark follows the ship. They did not seek the lives, but only the property of others.

Sheridan, in command of the soldiers of the United States, made with their bayonets a cordon around the places of deposit. He fenced in the goods and chattels of citizens with Federal bayonets. He saved the property and kept the peace, but displeasure waited on him. The governor of Illinois decorated him with his censure in a special message. Men asked a grand jury to indict him, meaning to trail his plume in the degradation of judicial accusation. The press was shocked at the employment of soldiers at a fire—next to a Legislature, a fire is as bad a place for soldiers as can be. This was all very ominous, but Sheridan rose phœnix-like from the ashes, and the nation held him dearer than before. He was widely and bitterly condemned, and belied, for the responsibility he took, for the lives and the property he saved; he bided his time then, and the time came when those who stoned him would have gathered the stones again to build him a monument. Very likely he can wait for the truth to be known now. He has himself done nothing up to this time in New Orleans, save to assume command and retain it.

What he said to his superior officer, was not included in the approval telegraphed to him by the Secretary of War. I say this, measuring my statement; I say it while there still rings in my ears denunciation of the Administration because of the approving dispatches the Secretary of War returned to Sheridan. On the 6th of January the Secretary received from Sheridan this dispatch:

> There is some excitement in the rotunda of the Saint Charles Hotel to-night upon the publication by the newspapers of my dispatch to you calling the secret armed organization "banditti." Give yourself no uneasiness. *I see my way clear if you will only have confidence.*

A man begirt on every side by difficulties and dangers, confronted by a public temper so malignant as to vent itself not only in violence, but in petty social affront—a man far from his superior, and misrepresented every hour the telegraph can work, fears that truthless dispatches fed out through the press may have unsettled the confidence of his chief, and so he telegraphs "if you will only have confidence. I see my way clear." On the spur of the moment the Secretary answers:

> Your telegrams all received; the President and all of us have full confidence, and thoroughly approve your course.

There, an administrator less sagacious than the Secretary of War, a lawyer less astute, would have seen, when he came to read his dispatch deliberately, was a peg to hang an accusation on. "Approve your course." Might that not mean all the suggestions that Sheridan had made to his superior officer? To undeceive Sheridan and all others, if such could be deemed the meaning, that same day he reviews and revises his dispatch thus:

> I telegraphed you hastily to-day answering your dispatch. You seem to fear that we have been misled by biased or partial statements of *your acts.*

I emphasize it "*your acts.*" Not what you may have suggested to your superior officer, whether by written or oral conversation, but "your acts," are the words of the Secretary.

> Be assured that the President and Cabinet confide in your wisdom and rest in the belief that all *acts* of *yours*—

Thus twice distinguishing, first between acts of Sheridan, and the acts of all others, and second distinguishing against everything of Sheridan's save only *his acts*—

> rest in the belief that all *acts* of yours have been and will be judicious. This I intended to say in my brief telegram.

Much presumption of reason must be reversed, as much presump-

tion of innocence has been violated throughout this discussion, in order to stretch these two dispatches of the Secretary of War so as to make them testify approval of mere suggestions by General Sheridan not of anything he purposed or meditated doing himself, but of expedients Congress or the President might see fit to adopt. These were impulsive informal remarks made in the freedom and confidence of personal intercourse—made by telegraph it is true, but no more amounting to *acts* of Sheridan, than if meeting the Secretary of War in the street the words had dropped from his lips. Sheridan did suggest impossible and violent modes of proc eding; and as a constitutional lawyer he could not obtain a diploma, and hardly the degree of L.L.D. from any chary college in the land. It has been charged upon him that he branded the people of Louisiana at large as "banditti." An impetuous governor of a Western State said, as he is reported, that Sheridan branded "every man in three States as a bandit." If he did so, he did wrong, he did grievous wrong, he was as violent and unjust as some Senators have been; but I cannot so read his dispatch. Let me read it aloud.

NEW ORLEANS, LOUISIANA, *January* 5, 1875.

W. W. BELKNAP,
Secretary of War, Washington, D. C.:

I think that the terrorism now existing in Louisiana, Mississippi, and Arkansas could be entirely removed and confidence and fair-dealing established by the arrest and trial of the *ringleaders of the armed White Leagues.* If Congress would pass a bill declaring *them* banditti they could be tried by a military commission. *The ringleaders of this banditti, who murdered men here on the 14th of last September, and also more recently at Vicksburgh, Mississippi, should, in justice to law and order and the peace and prosperity of this southern part of the country, be punished.* It is possible that if the President would issue a proclamation declaring *them* banditti, no further action need be taken, except that which would devolve upon me.

P. H. SHERIDAN,
Lieutenant-General, United States Army.

If Sheridan here calls banded murderers "banditti," what code has he offended? The dispatch applies the term to notorious malefactors, to men who murder, rob, and burn; and those who object are angry, and such Sheridan has offended. If there were in fact no such malefactors, he has described nobody, he has stigmatized nobody. If his words do hit existing persons, he may not be much of a soldier, but as a phrase-monger he cannot be despised. Rhetoricians, and word-hunters have reason to tremble for their laurels—Sheridan is a dangerous Richmond in the field. He may not be great in things, but he is clever in names. We have heard a good deal about blood curdling at this dispatch; I hope all this same blood curdled at the inhuman and dastardly massacres for whose despicable authors Sheridan has found a name.

The right of Sheridan has been challenged in this Chamber "to breathe the free air of a republic." Mr. President, that degenerate, apostate generation of Americans, which, knowing the services of General Sheridan, shall judge him "unfit to breathe the free air of a republic," ought to burn the memorials of our fathers by the common hangman, dance on the tomb at Mount Vernon, and fling down the obelisk on Bunker Hill. We have been reminded that "this cavalry officer" hewed his way to renown "with his bloody sword." I believe he did. His sword was red, not with the blood of the innocent and the unoffending, but with the blood of men in arms, men embodied under the uplifted banners of revolt, striving to dismember their native land, to perpetuate the crime and curse of slavery, to destroy the fairest fabric of free government that the world has ever seen. Sheridan's sword was not the sword of an assassin, stabbing the humble

and the helpless, but the sword of a soldier fighting that free government might not perish from the earth.

These are not grateful reminiscenees. I would gladly let by-gones be by-gones; but when the most illustrious soldiers of the Union are taunted with the deeds of valor whieh gave vietory to us in our direst struggle, the retrospeet is forced upon us. Sweeping denunciations, opprobrious imputations, eontinual disparagement of the national authorities, only stir and fan the smoldering embers of seetional hate. They will not paeify the South; they will not earry the next presidential election. They are dragon's teeth, and they grow into lawless vengeanee. Here is a newspaper printed in Louisiana on the 16th of this month, eleven days after the Senate began to ring with these denuneiations. Look at this reflex of the hard words we have heard.

Every eountry has had its *patriot to rise up*, with a Heaven-strengthened arm, and in freedom's cause strike down the petty tyrant oppressing it. To kill in self-protection is justifiable always. *To rid the world of such a monster as Sheridan would be a deed for all the world to applaud.* We don't mean for a midnight masked assassin to slay him, but for the people of New Orleans, of Louisiana, *in the majesty of their might to rise up and shoot him down on the streets as they would a rabid dog, in the broad open day*, with the sunlight of God's heaven shining down upon the act and growing brighter in approval. Texans will indorse the act, and indorse it with bayonets if need be.

Such are the fruits of violent eounsels given out by men high in party eonfidenee.

No, Mr. President, the praise and the blame of January 4th belong to the aetors in the scenes it witnessed. And here, one would suppose, in this forum at least, discussion might pause; here, one would suppose the Senate might take leave of the baffled plot in the legislative hall. When Governor Kellogg is impeached or indicted; when General Emory or General De Trobriand is eourt-martialed or proseeuted; when the two men who aecompanied General De Trobriand are sued or proceeded against, several grave questions will arise. The Senator from Ohio eried out yesterday "What exeuse has Emory?" I do not know, Mr. President. I do not appear for General Emory. I am not his attorney of record, or his eounsel, nor is he triable here. I do not eome to ehampion, justify, or befriend, either of these persons. I do not appear to vindicate the President of the United States. He needs no vindieation. He was a stranger to the whole proeeeding. I do not appear to ehampion the republiean party. The republican party had no part or lot in the affair. The remedies of those aggrieved are ample, and I eannot believe that the Legislature of Louisiana died of the attempt of a minority to eapture it, or of the failure of that attempt. This was said in the democratic meeting in the eity of New York. It was there asserted that the Legislature expired when five intruders were sileneed and retired to seats assigned to other spectators. The announeement was reeeived with applause; but I eannot aceept it. Mr. George Tieknor Curtis, one of that radiant eonstellation whieh sheds the gladsome light of jurisprudence on the democratie party, is reported in the New York Times to have said:

I alluded at the commencement of my remarks to that fundamental principle which renders it utterly impossible for any external power of any nation whatever to interfere with the right of State members to hold their position and exercise their functions, and *I affirm that when a single member, by any interference whatsoever other than an order of the body, is expelled from that body, its legal existence is destroyed because its authority is destroyed.* [Applause.]

This view of the subject renders it the more eonsoling that no democratic member, and no man in the minority entitled to take part, was molested on the oecasion. The members who were molested, belonged

to the majority; they were only imprisoned and assaulted, and clamored down, and shut out of their chamber; and we are not told that such violence takes the life of a Legislature.

It is no part of my purpose, I repeat, to vindicate Governor Kellogg. Much has been done in Louisiana, formerly and lately, on both sides, which I cannot approve. If my wish could prevail, iniquity, wherever found, would be chastised and eradicated. I speak only for common sense and common right. We have been compelled, in advance of the evidence, in advance of the truth, to hear the guilt or innocence of Kellogg and the rest argued as if the parties and the subject were all before us, and as if we had jurisdiction to try them. The questions have been presented with many disguises and distortions, it seems to me, and of some of these I mean to speak. For this purpose I have nothing to do with Mr. Kellogg, except that he was acting-governor of Louisiana. All the powers which the governor of that State possesses, all the prerogatives he wields, all the attributes wherewith he is endowed, Mr. Kellogg held. If there was latent defect or infirmity in his title to office, the fact is not an element of the case; it is wholly immaterial to the matter now in hand. Indeed I believe no Senator has denied this, unless denial can be found in the monotonous slurs with which allusion is made to the name of Kellogg. In the long special plea of yesterday, the Senator from Ohio, as he truly said repeating "a thrice told tale," floundering again through the dismal swamp of the old election of 1872, after all, did not, I think, challenge the fact that Kellogg in law held the instrumentalities, incarnated the authority, and wielded all the prerogatives of the governor of Louisiana. A few other facts are needful to the view I shall present, and although others have recited them, or most of them, I must recite them too.

The laws of Louisiana plainly prescribe who did, and who did not, constitute the legislative body which alone had power to organize. The statutes in express terms confined the power to those *returned as elected;* it was expressly denied to all others. Those holding certificates of election and enrolled by the secretary of state, and no others, could vote or act. By the constitution of Louisiana, contested elections must be decided according to law. They are remitted to the mode fixed by statute. By the constitution, the yeas and nays must be entered in the journal—I quote the language—"at the desire of any two members, on any question." So vital I may remind you is this provision, that it lives and speaks in all free constitutions. The law clearly fixed the mode, and the only mode, in which the act of organization could be done. I heard the honorable Senator from Missouri [Mr. BOGY] argue the other day that the statutes of Louisiana were satisfied when the clerk of the former house had presented himself and called the roll. There, argued the Senator, the law stops, and there it is satisfied. I heard the Senator from Ohio yesterday also venture on an argument something like this. He spoke of those who "stick in the bark;" he said he would not speak of "pettifoggers," but only because it would not be civil. The same Senator referred to the fact that a committee of the Senate in reviewing the manifold provisions of one of the statutes of Louisiana, to which I have alluded, found provisions in it conflicting with the constitution of the State. Did the honorable Senator mean you to understand that the committee intimated that any provision now in question was repugnant to the constitution, or in any respect wanting in validity? The Senator could not have meant that. The fact is exactly opposite. Canvassing the whole statute to find its defects, the commit-

tee pointed out its flaws, and no where is there a doubt expressed of the binding force of the sections which control and define the mode of organizing the legislative houses. These are the only sections now involved, and the fact that the committee visited no criticism on these sections, is affirmative assertion of their force and validity.

I would treat with respect any man, who with the statutes of Louisiana before him, has the faith or the courage honestly to think these statutes require, as to the organization, and the function of the clerk, only that he should call the roll. But it is a chief canon of construction to read a statute in the light of the object for which it was made, in the light of the evil to be remedied, the danger to be averted. We know historically that this statute was made for this very case. It was enacted after just such an attempt in less degree had been made in the Legislature of that State. It was made on purpose, I repeat, to avoid and forbid such a stratagem and conspiracy as attempted to dominate the Legislature on the 4th of January.

The Senator from Ohio said that his colleague had omitted to read a provision of one of these statutes, a provision that it should not conflict with the constitution of the State of Louisiana. My honorable friend from Maine [Mr. MORRILL] with his usual wit remarked that "to omit such a provision would be rough on the constitution." One would think from the remarks of the Senator from Ohio that if the statute had not recited that it should not override the constitution, the constitution would have been overridden. So microscopic his examination, so great his refinement on sophistry, that the honorable Senator from Ohio solemnly bade us observe that this statute gazetted all the world that it really did not intend to trample down the constitution of Louisiana. Kind and considerate statute!

The statutes of Louisiana, after providing, first, that the names of all persons entitled to vote in the organization of the Legislature shall be enrolled by the secretary of state, after providing that no man, whoever he may be, unless he has been returned by the returning board and his name inscribed on that roll, shall take part in the organization, by a supplemental act declares these words:

> For the purpose of facilitating the organization of their respective bodies, the secretary of the senate and the chief clerk of the house of representatives *shall hold over and continue in office from one term of the General Assembly to another, until their successors are duly elected and qualified.*

So says our congressional statute, speaking of the House of Representatives of the United States. So says a statute passed after the turmoil of 1839 and more recent turmoils had warned us of the danger of unrestrained modes of organization; and all political parties, all the representatives of forty-six States and Territories, have bowed in obedience to the statute, no matter how high party spirit ran. Yet now comes the Senator from Ohio to tell us that a statute, equivalent in its terms, is satisfied by a destructive and impotent construction, which the ingenuity of no man, and no caucus however eager or desperate ever dared to suggest.

No, Mr. President, the statutes of Louisiana required the organization of that house to be made in one way, and permitted no other way known among men. It was so written; and persons not authorized, contestants, claimants, or not, were strangers without the semblance of right to intrude or take part. Such persons, five or fifty, acting in defiance of law, were an unlawful assembly; and if they occupied the place set apart for members returned, at the time when the law required organization to take place, and acting with a common intent, by turbulence, disorder, and fraud, prevented a lawful

organization, they were breakers of the peace and rioters. Such persons, so acting, were trespassers and wrong-doers, at every step, banded together to commit a misdemeanor, and it was lawful for the proper authority to quiet or expel them. In such a case as I have supposed, this was the prerogative of the body whose privileges were invaded; it was, when the public peace was broken, also the right of the magistracy of the State, and of those lawfully summoned to aid.

Thus far I have affirmed nothing of what in fact took place in the instance before us. Let me now come to that. On the 4th of January, at noon, the hour and place appointed, came one hundred and two members of the Legislature of Louisiana returned as members of the house. Fifty-two were of one party; fifty of the other. Mr. Cousin, a returned member, did not come. He was kidnapped; he was abducted. He was abducted because he was a member. I use these words conscious of their import. I use them in the presence of all the testimony, from whatever quarter, which has been laid before us. I repeat that Mr. Cousin, a republican member of the Legislature, was kidnapped and abducted because he was a member. He was kidnapped by a trick which prostituted the forms of law to an unlawful purpose. He was arrested under pretense of embezzlement; under charge of having embezzled three dollars two years before. He was seized and carried by steamboat and otherwise into a distant locality; he was thrust into concealment in the hold of a steamboat; he was told that the whole purpose in seizing him was to prevent his being present at the organization of the Legislature. He was told that he should not see or speak to anybody; but that if he would be quiet till the Legislature had organized he should not be hurt; and finally when the Legislature had organized as was supposed, he was set free, the men who abducted him going with him to a magistrate, and one of them, Mr. Picayune Smith, signing a recognizance—a recognizance to answer to a charge that two years before, while collector of taxes, which he was for only two days, he had embezzled three dollars. In violation of constitutional right, in violation of parliamentary and legislative privilege, in derogation of the fundamental principles of our system of government, as a step in a conspiracy to dominate a Legislature, this man was arrested and prevented from going to his seat to utter the voice of the constituency which confessedly had elected and commissioned him to speak for it. Who has risen on the other side of the Chamber to denounce this act of lawlessness and baseness? I may not properly refer to the proceedings of the other House of Congress, but the newspapers inform us that a special committee has been raised to inquire whether a person invited to be a witness before a committee, a person who had testified and been discharged, could be sued for defamation of character, or prosecuted by a fellow-citizen. So sensitive, if we may believe the public journals, is the House of Representatives touching its privileges and the privilege of those protected by its ægis, that a special committee inquires whether a discharged witness may be prosecuted by a fellow-citizen. Here is a man not summoned as a witness, but elected to a legislature. The time has come for him to take his seat. The division between parties is so nearly equal, that not possibly, but probably his weight may make the scale kick the beam; and political conspirators, plotting the overthrow of law, kidnap him, carry him away to a remote place, hold him by force, for the avowed purpose of impairing the legislative force on one side, for the avowed purpose of controlling and stifling legislative action; and in the American Senate no democratic Senator rises to denounce or reprobate the proceed-

ing. The Senate rings with denunciation, but it is all of those whose rights were trodden under the feet of violence and fraud.

The Senator from Ohio says that he has in the past told these people at the South they were doing wrong and they ought to stop. Yes, Mr. President, but precept and example must be thorough and consistent to be efficacious. James Buchanan disapproved of secession, but he said he did not know any way to prevent it or put it down, and that secessionists had great reason for what they did. He said there was an idea that troops could act as a posse for a marshal to be sure, but in South Carolina the marshal had resigned, and therefore there was no marshal, and how could a posse act, and what could troops do without a marshal? The democracy of the North, some of them, said that secession was objectionable. Does any man believe that the people of the South would have waged a bloody issue had they been made to feel that the democracy of the North, uniting with the republicans of the North, would present one grim, undivided front, united to the bitter end in the purpose that the Republic should live and rebellion should die? Who believes this? Who believes that eight million people, an agricultural people, without skilled labor, without diversified industry, without factories, without rolling-mills, without resources, would have waged a bloody war against twenty-one million of united people possessing workshops, rolling-mills, factories, skilled labor, diversified industries, and all the means to conquer with beyond any people of any country or of any age? Who believes that men in the other House of Congress would have said, as more than one who hears me heard them say, that the confederate troops would be paid with coin from the Boston banks, and that they would water their horses in the Hudson and the Saint Lawrence? Who believes that such wild expectations would have led the South into the red sea of war, had it been known that the democracy of the North, as one man, wedded in solemn wedlock to the flag and the Government, would stand shoulder to shoulder till rebellion was trampled to the dust?

I know that Mr. Buchanan, and others, talked in a deprecating way about rebellion. I know that now democratic Senators with extenuating holiday and lady terms deprecate assassination. The Senator from Ohio speaks of inhuman butcheries and burnings as "homicides not authorized by law." Is that the terse vigor which will make desperadoes halt and quail? No, sir. If you would discountenance a desperate brutal man in acts of violence, you must not incite him by encouraging his passions, by exaggerating his grievances and inventing new ones for him, you must not picture in lurid colors his imaginary wrongs, you must not denounce the law he violates, and the authorities he defies, you must not tell him he is a victim of tyranny. When you have done all these things, it is of little avail to add that as a general rule you think sin is sinful. If violence in the South is to be rebuked and discouraged by those having the ear and the confidence of the agitators, it cannot be by clogging the wheels of lawful authority, by heaping opprobrium on all the ministers of law, by heaping maledictions on the laws of Congress, by insisting that whatever is is wrong, and by stirring up strife, and inflaming all the discontent in the hearts of those who brood in baffled bitterness.

Let me return to the narrative.

Mr. Cousin, I say, did not appear. A man whose appearance resembled a member of the Legislature was shot in the street on the night of the 3d of January. His resemblance to a republican member, cost him his life. It seems to have been something such a case

as that narrated by the count in "Charles O'Malley"—a noted duelist, who, as my friend from Illinois [Mr. LOGAN] said the other day, used to go gunning after other people. He wrote a letter one day to a friend at the breakfast-table and said, "I was out before breakfast this morning and shot a fellow in the knee, but he turned out to be the wrong man." [Laughter.] Somebody went out after tea and shot a man down in the street, but, although he looked like a republican member, it turned out to be the wrong man.

There came also Mr. Vigers, the clerk, with the roll made by the secretary of state, as required by law. The roll bore the names of one hundred and two persons, and bore the name of no other person who was present. This roll was conclusive; it was final. The fifty-two republicans had agreed on Mr. Hahn for speaker; the democrats on Mr. Wiltz. If the law had its course, Mr. Hahn must be chosen. The law not only required Mr. Vigers to call the roll—but to preside, and count and declare the votes of those on that roll. The presiding officer to be chosen, and the only one known to the law, was a speaker, and he must be elected by a majority of those on the roll and voting, being those returned as members. Suddenly, Mr. Wiltz having stationed himself within reach of Mr. Vigers, the clerk, a motion was made to declare Mr. Wiltz temporary speaker, an officer unknown to the law. Most of the accounts say that only the affirmative was put, not the negative; but this omission did not injure a void proceeding; and, amid a roar of voices, Mr. Wiltz, without waiting for the announcement of the vote, seized the chair and pushed Mr. Vigers from his place by force. Instantly another motion and a continued roar brought forth a temporary clerk, another officer without existence in law. A like proceeding produced a sergeant-at-arms, and a corps of deputies who had been foisted into the hall as bystanders.

"A whistle garrisoned the glen!"

Instantly these men displayed gilded and printed badges of office, and several of them were at once recognized as captains of armed bands which only three months before had shot down citizens and police, and seized the government and archives of the State. Protests were made, and disregarded. The yeas and nays were repeatedly demanded by more than the number required by the constitution, but they were refused and shouted down.

I stop here to remark upon a passage in the argument of the Senator from Ohio, [Mr. THURMAN.] The honorable Senator said that the yeas and nays could not be called pending the proceeding, because the house was not organized, and he referred to what took place in the House of Representatives of the United States in 1839. The Journal of the House in 1839 shows expressly that no refusal of the yeas and nays ever took place save in one condition of facts. The presiding officer, before the roll was made (there being then no such statute as there is now and as there is in Louisiana,) there being no roll completed, said, "Without a roll, we cannot call the roll; without a list for yeas and nays, we cannot call the yeas and nays." And when on the 11th of January the roll had become substantially completed, the first demand for the yeas and nays was listened to, and the yeas and nays were ordered, says the Journal—I give its language—"by general consent." And yet because there was no statute requiring a roll to be made, because there was no roll in existence, because the very condition-precedent, the very case which we have here in hand, was absent there, the Senator from Ohio cites that as a precedent to justify what was done in New Orleans, when the reason, the only reason given in 1839, shows conclusively the wantonness and usurpation of this Louisiana proceeding.

The Senator from Ohio reminded us of a legal maxim, *ignorantia non excusat legem.* I know the law does not excuse ignorance—it seems a hard rule, and yet it seems as hard for lawyers as for others. When listening to the law as laid down to us sometimes of late, I have been moved to doubt whether soldiers are likely to get wrong more than lawyers bred, in judging of legal right and wrong. Party prejudice, seems more blinding sometimes than ignorance—much learning seems yet to make men mad. My honorable friend from Ohio stated that the yeas and nays could not be called because the body was not a "house;" no organization having been effected; and yet he argues that at that moment of time, this inchoate body was "house" enough to pass upon the rights of members to sit, to overrule the statute, to import five men not on the roll and to seat them. I think that a body which is "house" enough to pass upon claims to seats, must be "house" enough to call the yeas and nays.

Mr. THURMAN. Mr. President——

The PRESIDENT *pro tempore.* Does the Senator from New York yield to the Senator from Ohio?

Mr. CONKLING. I beg my friend not to insist unless he thinks I misrepresent him.

Mr. THURMAN. You have done it.

Mr. CONKLING. Then of course I yield.

Mr. THURMAN. I was speaking of the house before the organization was completed, and speaking of it at that time, I said that there was no organized house to call the yeas and nays. I was not speaking of the house after the election of Wiltz as permanent speaker, for after that the yeas and nays were called whenever they were demanded.

Mr. CONKLING. Mr. President, the honorable Senator did maintain, and the facts and his argument required him to maintain, that the yeas and nays could not be ordered because the house was not so organized as to permit its being done, and in the same breath he did argue that at the same time, for it was the same time, it was lawful to seat men who had in my opinion no more right to act or vote than they had to take part in the deliberations of the Senate or the Supreme Court of the United States. The Senator facetiously referred to me to illustrate his argument. He said "Why the Senator from New York came here once and he had no credentials; and the honorable Senator from Maine [Mr. HAMLIN] moved that he be admitted, and the Senate said 'amen.'" Yes, "the Senate" said 'amen,' because there was a Senate to say 'amen,' and no statute stood in the way. In the case in Louisiana there was no "house" to act or say 'amen'—no house according to the Senator that was even "house" enough to call the yeas and nays, and a statute forbade any one to say 'amen.' The Senator from Ohio speaking of the Senator from New York said "he was like the foolish virgin that had no oil in her cruse." The Senator's scripture is as bad as his law. The woman with the cruse was a widow woman, and she always had oil—that was her strong point, [laughter;] and I say to the Senator "Search the Scriptures," "Search the Scriptures." If anything can regenerate your politics and correct your law, that will do it. [Laughter.]

Mr. President, under color of this illegal temporary organization, five or eight men were declared members who had and could have no more right to sit and vote at that time than they had to mingle in the government of a foreign State. Many of the members attempted to withdraw and escape; they were seized and made prisoners by badged jailers, and knives and pistols were brandished to compel

them to submit. With the votes of those thus illegally and violently imported, and without the votes of the legal majority, Mr. Wiltz was next declared permanent speaker, and in like manner the whole organization was declared permanent.

I pause here a moment to count up results so far. The whole of this so-called organization styled "temporary," no matter how stood the vote, was void, and in defiance of law; but waive that for a moment; suppose it had been lawful to elect a temporary speaker; suppose it had been lawful to refuse and shout down the call for the yeas and nays; suppose it had been lawful to ignore the old clerk and his function, and to snatch it from him; suppose all this, and how can it be that Wiltz was elected? Who voted for and carried his election? Did the authorized members, and they only, vote? If so, we know the majority was against Wiltz. Did he receive a majority? If so, we know that persons voted who the law said should not vote and whose votes were worse than void. In any aspect, the contrivance by which Wiltz seized the chair was just as void, just as much a color and a sham, as if he had assumed it by a wave of his hand. Here is one thing fixed: fifty men could not outvote fifty-two. To prove that they could, I think would dizzy the arithmetic even of the Senator from Ohio. My honorable friend from Vermont [Mr. EDMUNDS] reminds me that the fifty were democrats and that democrats are prolific in voting. [Laughter.]

The Senator from Delaware [Mr. BAYARD] thus confesses and avoids this point:

> The Kellogg party may have been deceived as to their numbers, and outwitted by the defection in their own ranks, or by the superior parliamentary skill and knowledge of their opponents; the organization may have been perfectly regular or it may have been in some degree irregular and open to criticism; but it is certain that it was quiet, that it was peaceful, and unaccompanied by any threat or act of violence on the part of any conservative member. When I say that I mean that it was unaccompanied by any show of that "domestic violence" which is spoken of in the Constitution, which gives the President of the United States the right to interfere, and there was no pretext for the existence of anything capable of being termed "violence" on the part of the one hundred and one members of the Legislature so convened.

There is a statement of a great many things that might have been. The difficulty is that none of these things were. Kellogg, it turns out, was not deceived, or the Kellogg party, as to their numbers. They were not outwitted by defection. It is true that bribery, rank and brazen, was attempted, as is stated to us by Michael Hahn and fifty-one other members of the Legislature. It is true that money by thousands was offered to republican members in order that it might be fulfilled that there was defection in the Kellogg ranks. But the bribes were spurned; and the men to whom they were offered stood true. It was not domestic violence—well "domestic violence" is not the chief question—and, says the Senator in effect, Wiltz and the 102 were peaceable. Yes, they were peaceably conspiring as accomplices with five intruders; and with them they trampled law and right and peace under foot; but

> "Their ways were ways of pleasantness, and all their paths were peace."

Again, what shadow of right had Wiltz and his confederates to assault and detain by force, and menace with deadly weapons, members who chose to leave the room? Was it not a bald breach of the peace and a breach of privilege? The honorable Senator from Ohio said yesterday that he would put a question to me. I put to him as a lawyer, as one who reveres the profession he adorns, the question whether it was not a breach of the peace, a violent infraction of law,

by main force, even without deadly weapons, to imprison and restrain men who chose to rise, being members, and move from their seats beyond the limits of the room in which they were held? I know that a legislative "house" may by order compel the attendance of its members; but here there was no house. The "house" may compel the attendance of its members. Here there was no house, says the Senator from Ohio, no house with vigor enough to call the yeas and nays. No order had been made to send for members; and yet badged jailers, brandishing knives and pistols, *vi et armis*, in the language of the law, lay hold of members of the Legislature, make them captives, and by terror and physical duress compel them to submit.

Still further, was it not riotous, by turbulence and trick, by trampling law under foot, by introducing men not returned, by armed janissaries, by violence and deadly weapons, to prevent a lawful assembly, whether of a court, a legislature, or a common council, from organizing as the law required?

Let me complete the recital of facts.

Wiltz an ex-mayor, who might be supposed by De Trobriand and the two privates who afterward attended him, to know the duty of soldiers to act as a peace posse, on motion adopted by the body, appointed a committee to wait on the military and request their intervention. Here I quote from the memorial sent here by fifty-two members of the Legislature, including Michael Hahn, with whom my friend from Ohio [Mr. SHERMAN] and I served in the House of Representatives and we know him to be a man of candor and respectability:

> About the time of the withdrawal of the republican members of the house, Mr. Wiltz gave or caused instructions to be given to the persons assuming to be sergeants-at-arms not to allow any one to pass out of or to enter the house. Great commotion at once ensued, and quite a number of knives and revolvers were drawn and displayed in a threatening manner. Most of the republican members had already left the room, amid great confusion, when Mr. Dupre, of New Orleans, (democratic member,) moved that the speaker be requested to call on the United States troops to preserve the peace of the house. The motion prevailed, and a committee, of which Mr. Dupre was appointed chairman, was appointed to wait on General De Trobriand, and request the interference of the United States troops to preserve the peace. In a short time the committee returned, accompanied by General De Trobriand and staff. Upon the appearance of General De Trobriand on the floor loud applause came from the democratic side of the house.

They called I say upon the troops of the United States, and requested their intervention. With this committee of five as ushers to bow them in, De Trobriand and his staff entered the legislative hall and the hall rang with democratic acclamations. Wiltz avowed the dependence of himself and his followers on military aid, and protested their inability to maintain themselves or maintain peace, and requested the general to quell bystanders, including the police. Here I refer to page 2 of the memorial sent up by the "conservative" members, that is the democrats:

> In the mean while, during the proceedings in the house, an additional number of police, with a crowd of disorderly persons, entered the lobby and engaged in menacing altercation with the sergeant-at-arms and his ten assistants. Finding that the sergeants-at-arms were contending with the mob, the speaker endeavored to procure the attendance of addition sergeants-at-arms. About one o'clock p. m. the disturbance in the lobby grew serious and a conflict was imminent.

This memorial establishes out of the mouth of the democrats that turbulence occurred between the police and other persons, and a violent outbreak was imminent. This, General De Trobriand quelled, by speaking to those who knew and felt his power to enforce his words; and then the man holding the speaker's chair by fraud and usurpation, and standing on broken laws, in the name of Louisiana laid his thanks

at the feet of an officer in his uniform, and the fullness thereof, with his sword by his side, which seems so profoundly to have impressed the honorable Senator from Missouri, [Mr. SCHURZ.]

When this was over, speaking in the presence of this body which could not call the yeas and nays, which had not vigor enough for that, but which had vigor enough to defy and trample upon the laws and the constitution of Louisiana,—this usurping speaker told De Trobriand that he thanked him because he had prevented bloodshed which was imminent. On this point I refer to page 4 of the memorial of Michael Hahn and his fifty-one colleagues:

> General De Trobriand, in substance, (the committee being unable to get the exact words,) asked Mr. Wiltz whether it was not possible for him to preserve order and keep the peace without calling upon him as a United States officer. Mr. Wiltz replied that it was impossible; that he had already instructed his sergeant-at-arms to do so. General De Trobriand then took action in the matter, and quiet was restored with little trouble. Mr. Wiltz then assured General De Trobriand that his coming had prevented bloodshed, and, as your committee is reliably informed, on motion, thanked him in the name of the General Assembly of Louisiana for his prompt response to the summons of the house, and the general retired.

Meanwhile, a majority of the legal members, fifty-two in number, when they could gain their freedom, repaired to the governor, and by written petition informed him that fraud and violence had taken possession of their hall, and called on him as the chief magistrate of the State to put them in possession and cause lawless intruders to desist. Thus notified and thus summoned, the governor requested aid, and the men he asked were soldiers. These men, to the number of three, went into the hall, and doing no violence, insisted that five men who had no right to vote or to prevent an organization should take their places among the spectators. General De Trobriand also insisted that fifty two members of the house whose election the Senator from Ohio does not deny, fifty-two members who stood inscribed upon the roll, should be permitted to re-enter that hall of legislation. Why did General De Trobriand include that among his acts? Because by the order of Wiltz, abetted by the men over whom he presided, including the intruders, the armed janissaries with gilded lapels, shut the doors in the face of these fifty-two members when they sought to come in. Thus the majority were barred out by force; and it was De Trobriand who alone had the potency to compel the doors to be opened.

The honorable Senator from Ohio, with that naïve and picturesque smile which sometimes lights up his face, turns I see to a friend as if he deemed this statement a romance. I beg to refer him to page 5 of the memorial of Michael Hahn and others, where he may read:

> When the members returned to the hall, following General De Trobriand, at his request and under his protection, and attempted to follow him through the door, the sergeant-at-arms at the door, at the order of Mr. Wiltz, closed the door in their faces and forcibly prevented them from entering; and they were not allowed to enter until the attention of General De Trobriand was called to the fact; and at his order the republican members were admitted.

The five intruders were caused to take places among the bystanders. The honorable Senator talked about "the lobby." Pray what does he understand "the lobby" to have been? The room was all one room, as this is. The lobby was that place upon which the Senator's hand would rest were he to allow it to hang from the back of his chair. Nothing separated the lobby from the body of the hall but a frail railing, not such a one as stood here once, and which on the motion of the honorable Senator was removed, because his constituents hung upon it and talked so loud as to divert him from his senatorial meditations; not so firm a barrier as that, but as I am told by the Senator familiar with it, a frail, low railing making only a visi-

ble line of demarkation between one part and another part of one and the same room. I have read somewhere that these intruders were cast into the streets. No, Mr. President, they were retired as my friend before me would retire if in place of sitting where he does, he were to sit upon one of the sofas sometimes allotted to the most honored guests of the Senate.

This done, all members stood again where the law found them at first; a lawful organization could have been effected at once, but the vote would stand 52 to 50. There was the rub. In view of this fact, the fifty who had just been first the jailers of their colleagues, and then had shut them out, would not vote, would not stay while others voted, and so they went out; of course to break up a quorum and frustrate the law. But it was all peaceable revolution.

This is by no means the whole history even of that day. The senate of Louisiana was in existence, an organized body confessedly legal. It held over from the previous year, and all its officers were chosen and installed. It was ready to proceed to business. It was its duty to meet at the same hour with the house. It was the duty of all its members to be present. But every democratic senator absented himself—what for? Before the hour of meeting, and again after the democrats of the house withdrew, the democrats of the senate and of the house, were all in caucus together,—an odd proceeding considering the surroundings, and considering that there was no lawful joint work to do. Some of the accounts inform us that these senators were privately assembled in a room near by while their associates were campaigning in the house, and that two hook and ladder companies, with scaling apparatus, were among the appliances of legislation provided by these peaceably assembled and now indignant "representatives of a sovereign State!" The President says he is credibly informed that these proceedings were part of a premeditated plan to wrest the State government from those who held it. Eye and ear witnesses relate that it was admitted while the scene was passing, that the democratic minority of State senators intended to organize a seceded senate, and join the minority-usurped house in recognizing as State officers the men who only three months before had led a bloody revolution in which many men had been shot down like dogs—a revolution waged under a proclamation issued by Penn, who had been the candidate for lieutenant-governor on the democratic ticket.

This conglomerated plot, this wretched conspiracy, set on foot by men whose very existence testifies to the laxity of law, is justified as a lawful and sacred proceeding. The honorable Senator from Ohio makes the acquisitions of a long life pay tribute to an effort to envelop it in a daze and glamour in which its ugly features may be hidden.

To what lawful interference and authority is such an affair subject? That is the question now presented to us.

We are asked to believe that such tumult and such disorder in any case, however clear or forcible, is above and beyond the power which may lay hands on all other disorders. The place being a legislative hall, and men duly returned being among the actors, law-breakers are secure from touch. They stand on holy ground. There, the feet of magistrates may not tread; there, a posse may not go; there, violence is in its sanctuary. The legal argument comes to this, because an attempt to test the case by all the particulars of fact which exactly measured its degree, involves minute examination of details beyond our reach. The question is one of jurisdiction. The jurisdictional elements are said to be the place and the official character

of those concerned. The actors being in part members of a Legislature, and the matter in hand being the organization of a Legislature in a legislative hall, it is insisted that disorder is not, like disorder elsewhere, subject to discipline and restraint.

Orderly or disorderly, peaceable or riotous, such persons in such a place are "a law unto themselves." If knives and pistols are brandished, if men are imprisoned or assaulted, if physical duress is resorted to, if a majority is overthrown by fraud, by noise, by agility, by stratagem; in short, if law be openly trampled under foot, still the proceeding is beyond the reach of external authority. The chief magistrate of the State—a civil magistrate, cannot touch it; no one can touch it. The governor and citizens must stand by and play the part of spectators at a dog-fight, and the upper dog and the under dog must tear each other until they fight it out. If right and peace and law go down in the grapple, and the conflict spread, still the sworn guardians of the peace must look on impartially like judges at a horse-race or umpires at a prize-fight.

Mr. President, I do not believe this good morals, good law, good sense, or civilized reason. In discussing such a position, I dismiss the contested facts of a particular case. The question, I repeat, is one of jurisdiction, of right in the chief magistrate of a State, present at the locality, to interfere and suppress disorder in a legislative hall during an attempt to organize. The honorable Senator from Maryland [Mr. HAMILTON] puts an unreal case adroitly thus:

> By what authority, I would ask that Senator, was the governor to aid in the organization of the Legislature any more than that soldiery he called upon and who did it? What, sir, has it come to this, I again ask that honorable Senator, that the governor of a State has a right to organize a Legislature, or to aid in the organization of a Legislature?

With a statement so perversely ingenious, it is hard to take issue. No one contends that a governor may organize or aid in organizing a Legislature. To so state the question is to use words to pervert ideas. The governor of a State has nothing to do with opening a court, with consecrating a bishop, with dedicating a church, with burying the dead; but if turbulence break out in a church, at a sepulcher, or in a court of justice, any civil magistrate has as much power to reduce it as if it broke out on a race-course, in a play-house, or a skating-rink. The civil authorities in free Switzerland have nothing to do with baptizing children; but the other day when children were baptized in Geneva and turbulence broke out, not only the civil authorities, but the military authorities, laid heavy hand upon it. In all these cases, the right of the civil magistrate must hinge, not on the place, not on the consequence of the personages guilty, but on the breach of the peace. A court is a temple of justice and of regulated liberty; so is a Legislature; both are public places. If peace reigns there, it is the public peace. If violence seizes upon them, the public peace is broken. A State prison is a public place. The State prison three miles from Lincoln in Nebraska is a public building of that State. A dispatch of the 11th of January published in the Chicago Tribune informs us that the convicts there refused to submit; disorder broke out; and, adds the dispatch, "Governor Furness has telegraphed to Omaha for United States troops and fifty soldiers are on the way." These soldiers were not present at Lincoln. The governor was not present. He could not act on view. No call had been made upon the President of the United States. There was no "domestic violence" in the language of the Senator from Delaware. The troops were not on the spot "to act, as police," as democratic newspapers have just discov-

ered that De Trobriand and his staff acted on the call of the usurping speaker. They were summoned from a distance of seventy miles in military array.

Mr. THURMAN. Will the Senator allow me to ask a question right there?

Mr. CONKLING. Yes, sir.

Mr. THURMAN. Does the Senator know of any law that authorized the governor of Nebraska to summon United States troops as a posse to put down an insurrection in the penitentiary, or that authorized the officer in command of the troops to obey any such summons?

Mr. CONKLING. I am glad the humanity of parties goes so far that even the convicts in the penitentiary of Nebraska are not without somebody to speak for them. [Laughter.] These oppressed citizens have been caught and caged, while others not so good run at large, but the difference of condition makes little difference with principles of law or with their application.

I will answer the Senator. Governor Furness in my opinion had no right to summon troops to reduce a tumult merely because the *locus* was a prison, rather than a palace or a Bridge of Sighs. No, sir, the fact that those concerned were convicts, did not enlarge the authority of the governor to appeal to military force. Governor Furness had no more right to summon soldiers to one scene of a breach of the peace than to another. This is evidently the opinion of the Senator from Ohio also. The right of Governor Kellogg to appeal to soldiers to stay lawless turbulence in a legislative hall, stands on the same ground as the right of Governor Furness to make the same appeal in respect of disorder in a prison. There is no legal distinction between the two cases.

Now, having answered the Senator, I have a question for him. Where has the Senator's constitutional sword been slumbering all the time since troops of the United States entered the State prison of Nebraska, and with their bayonets thrust down disturbers of the peace? We have heard no flourish of constitutional trumpets—not a note even from the corypheus of the band. There has not even been any curdling of blood, nor one faint spasm of constitutional virtue. A governor, of his own mere motion, with lightning for his messenger, causes troops of the United States to proceed seventy miles from their post and make one of the buildings of a "sovereign State" the theater of the submission they forcibly compelled, and not a resolution of inquiry is offered, not a word of disapproval is spoken by the sleepless watchers with the Constitution—the champions of State rights. Why is this? Convicts cannot vote. Convicts are poor material to make favorite or fashionable martyrs of. It would be hard to fire the public heart for them, albeit their case is the same in the sight of the Constitution. Hit them again—they have no friends; save sympathy and outcry for offenders too numerous and too daring to be punished—waste no words on vermin, who, all told, could not carry one primary meeting.

Mr. President, if there be a spot in any State, be it palace or hovel, exempt from visitation when a crime or breach of the peace occurs there, it is a spot not marked on the map, or so hidden or fenced about with physical barriers as to be inaccessible to ministers of law. The capitol building in a capital city, is not such a place.

It is argued on a separate ground that acts such as are reported from New Orleans, are not amenable to municipal law, because done pending the process of organizing a legislative body. To be sure, the statutes of Louisiana were defied; but for this the Senator from

Maryland [Mr. HAMILTON] makes curt apology. His defense, if not logical, is all that logic can make. He dispenses with the statutes altogether; he says the law was not binding and might be defied. Why? Because it had been enacted; because it stood unrepealed and unchallenged! This is odd, but it is the Senator's reasoning. It was made, he says, by a previous Legislature. Of course it could not have been made by a future Legislature. The argument therefore is that because it was the law, it was not the law! The Senator says:

*If the organic law, which is supreme, prescribes a mode, that mode must be observed, but nothing besides. * * * Just here, having in my eye the honorable Senator from Louisiana,* [Mr. WEST,] *who stated that if there was a legislative enactment prescribing how a future Legislature should be organized, it could not be legally organized unless it followed the forms thus prescribed. I deny the legal conclusion that the Senator would attribute to any such legislative enactment. Such enactments for precaution's sake may be passed as tending to preserve order, but they can have no legal binding power upon an incoming Legislature.*

This is the gospel of peace preached by the law-abiding Senator from Maryland in behalf of the lamb-like complainants whose champion he is. He does not contend for the right of a Legislature to repeal the acts of its predecessor. In this, as a general truth, all would agree. He does not content himself with insisting that one house may resist and undo what both houses, and the whole law-making power, have done. This would be violent and revolutionary, but still it would fall short of his need. The stress of his case pushes him yet further, and he asserts that a minority of members may, before the body is organized, before it has power to call the yeas and nays according to the Senator from Ohio, before it is a "house," defy and disregard the statute laws of the State. Even this enormous pretension, was too small for the occasion. The constitution of Louisiana remitted to the statute law the mode of settling contested seats, and ordained that the yeas and nays should be entered on the journal at the call of two members *upon any question*. This too was trodden under foot; and all this wrong piled on wrong, is justified and glorified.

Mr. President, I ask the attention of the Senate to a high authority touching the position, the power, and the relations held by the clerk of the old house on the 4th of January, to show the nullity of the trick by which an unauthorized person usurped the province of propounding questions, and unlawful questions to the body. Here is the report of a famous case, the case of the *Commonwealth vs. Green and others*, heard and decided in Pennsylvania in 1839. It was a *quo warranto* to test the right of Ashbel Green and others to certain offices to which they had been elected by the General Assembly of the Presbyterian Church. My honorable friend from Ohio, though somewhat mixed about cruses of oil, and other leading cases reported in the Scriptures, will have some respect for this case, because Andrew Jackson, whom he venerates, was so moved by the dissensions it treats of, that when asked what troubled him most, General Jackson answered "The divisions in the Presbyterian Church!"

The wars of religion have been among the best fought, and most astutely contested—so have the litigations of religion. This case is an example. It was tried and argued by some of the ablest men of their time, and they gave it their best endeavors.

The questions involved were first tried before a jury. They were carried up and decided by the court in banc, when the court in banc had at its head Chief Justice Gibson, *clarem et venerabile nomen*.

This case (4 Wharton, page 531) holds: That the General As-

sembly of the Presbyterian Church was not a corporation, or a quasi corporation, and was not subject to the visitorial powers of the court of chancery; but that it was vested with the attributes of legislation. Lord Coke said that no simile holds good in everything. A still older authority says, "no simile runs on all fours." But the Senate will see between the occurrence in Louisiana and the doings here reviewed, a striking similitude. I read from page 590:

The moderator, or in case of his absence another member appointed for the purpose, opens the next meeting; * * * he is directed to hold the chair until a new moderator be chosen.

I ask you to observe that the statute of Louisiana is more explicit than the language I now read, because here the provision does not contain the words "and qualified." But the moderator of the previous session is to hold his office until a new moderator is chosen. Now I read the occurrence out of which the contest arose:

Mr. Cleaveland then moved that Dr. Beman, of the Presbytery of Troy, be moderator, or, as some of the witnesses say, that he take the chair—

Just as there has been a little doubt whether in the Louisiana affair the motion was for temporary chairman or temporary speaker—

The motion being seconded, the question was put by Mr. Cleaveland, and was carried, as the witnesses for the relators say, by a large majority, and by this they mean that a large majority of voices voted in the affirmative. The question was reversed, and, as the same witnesses say, there were some voices coming from the southwest corner of the church who voted in the negative. This is denied by the respondents.

Dr. Beman, who was sitting in a pew the locality of which has been described to you—

I read from the charge of the judge—

stepped into the aisle, and called the house to order. A motion was then made that Dr. Mason and Mr. Gilbert be appointed clerks. There being no others put in nomination, the question was put by the moderator, Dr. Beman, in the affirmative and negative, and there was a majority of voices in their favor.

Dr. Beman then stated that the next business in order was the election of a moderator. A member nominated Dr. Fisher, and no other person being in nomination, the question was put affirmatively and negatively, and Dr. Fisher was elected by a large majority of voices. There was no negative votes on this nomination; several of the witnesses say he was unanimously elected.

Dr. Beman then announced the election of Dr. Fisher, as moderator, and said he should govern himself by the rules which might be hereafter adopted.

The case hinged on the validity or nullity of these proceedings, which are but the "counterfeit presentment" of what happened in New Orleans.

The judge charged the jury among other things in these words:

It is the opinion of the court that a member, although not an officer, is entitled to put a question to the house under such circumstances.

The Senate will observe that the judge charged the jury, in substance, that it was lawful to supersede the moderator who held over, and that another person might put a question, and that the vote on that question laid a foundation for an after-coming permanent organization. But what said the court *in banc* speaking through Chief Justice Gibson?

To all questions *put by the established organ*, it is the duty of every member to respond, or be counted with the greater number, because he is supposed to have assented beforehand *to the process pre-established to ascertain the general will;* but the rule of implied assent is certainly inapplicable to a measure which, *when justifiable even by extreme necessity, is essentially revolutionary, and based on no pre-established process of ascertainment whatever.*

To apply it to an extreme case of inorganic action, as was done here, *might work the degradation of any presiding officer in our legislative halls.* * * * For this reason, the choice of a moderator to supplant the officer in the chair, even if he were removable at the pleasure of the commissioners, would seem to have been unconstitutional.

But he was not removable by them, because he had not derived his office from them, nor was he answerable to them for the use of his power. He was not *their* moderator. *He was the mechanical instrument of their organization; and till that was accomplished, they were subject to his rule—not he to theirs,* * * * and the reason is that the decision of such questions as were prematurely passed here, is proper for the decision of the body *when prepared for organic action, which it cannot be before it is fully constituted and under the presidency of its own moderator,* the moderator of the preceding session being *functus officio.*

Many instances may doubtless be found among the minutes, of motions entertained previously; for our public bodies, whether legislative or judicial, secular or ecclesiastical, are too prone to forget the golden precept,—"Let all things be done decently and in order." But these are merely instances of irregularity which have passed, *sub silentio*, and which cannot change a rule of positive enactment. * * * The title of the exscinded commissioners could be determined only by the action of the house, *which could not be had before its organization was complete.*

Changing the illustration to the case before us, this authority holds that it was unlawful for anybody but Vigers to propound a question before the organization was complete, and that all votes and all proceedings and results under the usurped function of any other person, were void, and to be held utterly for naught.

Mr. President, the five persons for whom and by whom these acts were committed are described as peaceable. They blocked the wheels of government; they dominated and frustrated a legislature; they strangled the cardinal principle of our system, the right of a majority to rule; they stopped the breath of representative life; but we are told it was all peaceable. The lion would have lain down with the lamb, if the swallowed lamb would only have lain down inside of the lion and agreed with him.

I heard the honorable Senator from Ohio who sits nearest me [Mr. SHERMAN] denounce and characterize the usurpation of Wiltz. I ask the Senate what act did Wiltz do in which every one of these five intruders did not aid and abet him? In trespass, and in misdemeanors, all are principals. These five men appointed and incited the badged jailers who imprisoned members, who with brandished knives and pistols compelled members to submit. I ask the honorable Senator from Ohio, who put to me a question yesterday, was there an affray there?

Mr. THURMAN. Does the Senator want an answer to his question to me. I have about half a dozen noted. I think I shall have to take another time.

Mr. CONKLING. My honorable friend from Ohio had one whole day. I might ask him—

"Insatiate archer, would not one suffice?"

Mr. THURMAN. I only wish to know when the Senator turns around and addresses me, as he has done half a dozen times since I have been in, whether he expects me to respond at once?

Mr. CONKLING. Mr. President, when I speak of the law, I turn to the Senator as a Mussulman turns toward Mecca. [Laughter.] I beg the honorable Senator to understand that I look to him only as I would look to the common law of England, the world's most copious volume of jurisprudence. [Laughter.]

I had ventured to inquire was there an affray there? Were there riotous doings there? Was there a breach of the peace there? What is the regulation size of a breach of the peace? What is the legal weight and measure of a breach of the peace? How many cubits high must it be? How many pennyweights must it weigh? Was there a breach of the peace there? I read from the memorial of the conservative members—not democratic members; there are no democrats or republicans any more. The honorable Senator from Ohio

buried the republican party in oblivion yesterday by calling republicans "radicals;" and he put the democratic party out of fashion, because he always made obeisance to "the conservative party." Here is the conservative memorial:

In the mean while, during the proceedings in the house, an additional number of police, with a crowd of disorderly persons, entered the lobby and engaged in menacing altercation with the sergeant-at-arms and his ten assistants. Finding that the sergeant-at-arms were contending with *the mob*, the speaker, etc.

Before these words, "mob" being one of them, die away, I inquire again, was there a breach of the peace in that room? Will it not do, as to muscular requirement, that men were seized, imprisoned, and menaced with deadly weapons, and terrorized by a turbulence and din until five of their assailants and captors repaired to the military for protection, and their usurping speaker declared himself and his janissaries and confederates helpless and afraid?

What is a riot? Here place comes in, not to exempt wrong-doers from liability, but to aid in defining and constituting their offense. That which in the fields, or even in the street, might not be a riot, may be an aggravated riot in a church, in a court-house, in a State-house—anywhere where public proceedings by law are required to take place.

The same thing is true of time, of the public temper, the state of the community, recent riots that have occurred, threats in the air, murmurs of disorder, such as Sheridan describes. Let me read:

During the few days in which I was in the the city prior to the 4th of January, the general topic of conversation was the scenes of bloodshed that were liable to occur on that day, and I repeatedly heard threats of assassinating the governor, and regrets expressed that he was not killed on the 14th of September last; also threats of the assassination of republican members of the house, in order to secure the election of a democratic speaker.

Yes, sir, time and condition is of the very essence of the criterion by which to test the danger of turbulent proceedings. A match is a harmless thing. I light it here with a scratch, and its flame passes away in the air; but a match drawn in a powder-magazine may whelm all in a common ruin. So acts of violence in New Orleans are characterized and measured by the time, the temper, the situation; all these are the surrounding circumstances by the light of which the affair is to be judged. But regardless of time or place, what, I repeat, is a riot? A riot is a tumultuous disturbance of the public peace by three persons or more, aiding each other with common intent in an unlawful purpose, which they execute with turbulence. The purpose need not be unlawful if so executed. The lines of such offenses have been clearly marked by high authorities. I take up at once three cases relating to breaches of the peace, one in a church, one in a theater, one in a political and legislative meeting—three cases in which the courts say that proceedings stopping far short of the fracas in New Orleans, were riotous, regardless of statutes—riotous by the common law, and indictable and punishable in "what was once free America"—I borrow again from the honorable Senator from Ohio. I refer first to 2 Campbell, page 358, the case of Clifford *vs.* Brandon. Clifford, a distinguished barrister, went to Covent Garden Theater. He with others took umbrage at the prices which there prevailed. He, with others, hissed the actors, hissed them to damn a play. My friend from Ohio, who treats us so often to similies and figures drawn from the stage, will understand how a play is "damned." Mr. Clifford and others hissed the play and disturbed the spectators. Mr. Clifford and others were seized by a ticket agent—how he was uniformed does not appear. This functionary seized Clifford and others, violently removed them from the play-house, carried them through the

streets, and imprisoned them. An action was brought for false imprisonment. The justification was that they were engaged in riotous proceedings. The case was heard before the court, and the judgment was delivered by Mansfield. I read first the syllabus of the case:

Yet if a number of persons having come to the theater with a predetermined purpose of interrupting the performance, for this purpose make a great noise and disturbance, so as to render the actors entirely inaudible, though without offering personal violence to any individual, or doing any injury to the house, they are, in point of law, guilty of a riot.

Mansfield says:

But if any body of men were to go to the theater with the settled intention of hissing an actor, or even of damning a piece, there can be no doubt that such a deliberate and preconcerted scheme *would amount to a conspiracy*, and that the persons concerned in it might be brought to punishment. *If people endeavor to effect an object by tumult and disorder, they are guilty of a riot.* It is not necessary, to constitute this crime, *that personal violence should have been committed*, or that a house should have been pulled in pieces. I am clearly of opinion that the scenes which have been described *amount to a riot.* How can it be said there was no terror? Would any of the jury allow their wives or daughters to go to the theater during these disturbances?

Here is a case from North Carolina, reported in 4 Devereux's Reports, where a man went to a religious meeting and made grimaces and laughed; and when his rights came to be tested the court was confronted by the constitution of North Carolina, which guarantees to all their own religion, free from the thews and fetters of sects, guarantees to all the right, in a way no matter how unique or grotesque, to worship thier Maker by the signs and symbols and eccentricities which each may affect. The court, wrestling with the immunities which thus surrounded the case, said what I shall read. The indictment ended with the words, "against the form of the statute." There was no statute punishing the offence, and the court said the culprit could be convicted at common law, although the indictment laid it as done against a statute. The court said that in North Carolina no statute punished such an offense, and then proceeded, speaking through Ruffin, chief justice:

The offense is not charged as a nuisance, but as a specific misdemeanor, in itself.

* * * * * * *

I think the indictment sufficient.

In the further view, that the exercise of religious worship calls together large multitudes, whose assembly is lawful, and a duty in a religious sense, and a public duty in the sense of the constitution, the disturbance of whom *has an immediate tendency to bitter discords, the violent commotion of neighborhoods, and a breach of the peace*, I also think the indictment sufficient. (The State *vs.* Henry N. Jasper, 10 North Carolina Reports, Devereux's Law, 324, 326.)

I now take up a case coming from the State of Massachusetts, the case of the *Commonwealth vs. Hoxey*, 16 Massachusetts Reports, 385.

The indictment set forth * * * that the defendant while the moderator was presiding in the meeting—

A town-meeting authorized by law—

and was receiving the votes for a selectman, with force and arms, intending as much as in him lay to prevent the choice of said selectman according to the will of the electors, and to interrupt the freedom of election, unlawfully and disorderly did openly declare that the old selectman should not be chosen, and attempted repeatedly to take from the box, which contained the ballots of the electors, the votes of the electors: and so the jurors say, &c.

The defendant pleaded guilty to the indictment, and moved in arrest of judgment; "because the said indictment purports to be founded upon a statute law of the Commonwealth; whereas there is no such statute in the State, making the facts set forth in the indictment an offense against the Commonwealth; and because the facts set forth in the indictment *do not amount to an offense at common law.*"

What did the court say?

The tendency of the defendant's conduct was *to a breach of the peace*, and *to the prevention of elections, necessary to the orderly government of the town*, and due management of its concerns for the year. It is true that the common law knows nothing perfectly agreeing with our municipal assemblies. But other meetings are well known and often held in England, the disturbance of which is punishable at common law, as a misdemeanor. In this Commonwealth, town-meetings are recognized in our constitution and laws: and the elections made and the business transacted by the citizens, at those meetings, lie at the foundation of our whole civil polity. *If then there were no statute prohibiting disorderly conduct at such meetings, an indictment for such conduct might be supported.*

The criminal commissioners of England, commenting upon the case in 2 Campbell, say that Mansfield did not go far enough, that no violence is necessary, that the whole offense is made out when lawful proceedings are baffled, and disorder rules the hour.

Assuming that a breach of the peace occurred at the time in question, it was lawful for any magistrate to interpose and arrest it, apprehend the actors, and take all needful precautions against its continuance and renewal. Precaution alone, opened a wide field. This was the right of any person, though a private citizen, holding a warrant for the apprehension of the offenders. It was the right of any officer or magistrate, or of those he summoned, without warrant, not only to quell the disturbance but to apprehend the disturbers. I might cite many authorities to this, but no better exposition of the law is needed than that given in a charge to a jury by Judge King after the Philadelphia riots in 1844—Judge King who thirty years ago was nominated for justice of the Supreme Court of the United States.

He says:

An unlawful assembly, such as I have described, may be dispersed by a magistrate whenever he finds a state of things existing, calling for interference in order to the preservation of the public peace. He is not required to postpone his action until the unlawful assembly ripens into an actual riot. For it is better to anticipate more dangerous results, by energetic intervention at the inception of a threatened breach of the peace, than by delay to permit the tumult to acquire such strength as to demand for its suppression those urgent measures which should be reserved for great extremities. The magistrate has not only the power to arrest offenders and bind them to their good behavior, or imprison them if they do not offer adequate bail, but he may authorize others to arrest them by a bare verbal command, without any other warrant; and all citizens present whom he may invoke to his aid, are bound promptly to respond to his requisition, and support him in maintaining the peace. And a magistrate, either present or called on such an occasion, who neglects or refuses to do his utmost for the suppression of such unlawful assemblies, subjects himself to an indictment and conviction for a criminal misdemeanor. When, however, an unlawful assembly assumes a more dangerous form, and becomes an actual riot, particularly when life or property is threatened by the insurgents, measures more decisive should be adopted. Citizens may, of their own authority, lawfully endeavor to suppress the riot, and for that purpose may even arm themselves, and whatever is honestly done by them in the execution of that object will be supported by the common law. In the great London riots of 1780, this matter was much misunderstood, as it clearly was with us, and a general persuasion prevailed that no indifferent person could interfere without the authority of a magistrate, in consequence of which much mischief was done, which might otherwise have been prevented.

[At this point, the honorable Senator yielded to a motion for adjournment.]

Friday, January 29, 1875.

Mr. CONKLING. Mr. President, in the observations I had the honor to submit to the Senate yesterday it was my intent to set forth plainly several incidents in the scene enacted in New Orleans on the 4th of this month.

First of all, however, I reminded you that the President of the United States was void of offense, free from complicity, a stranger to the whole proceeding, and unprepared for it until after it had passed.

I also stated facts showing that General Sheridan was not in command at the time, nor even a spectator of the affair in any of its parts.

I recited the laws of Louisiana, constitution and statutes, depositing certain powers exclusively with certain persons, and defining the mode, and the only mode of their exercise. I recited the flagrant acts of concerted lawlessness and violence by which those laws were trodden under foot. I marshaled facts showing that the attempt of the minority to capture one house of the Legislature of Louisiana by stratagem and force, was not a design complete in itself, but a step in a plan to revolutionize the State government and wrest it from those who held it.

When the adjournment occurred, the words of a court had been read in part, to inform us what a governor or civil magistrate present at the scene may do to quell public disorder. I refer once more to those words, in the hope of impressing them on the Senate. Says the court, speaking of a civil magistrate, of all civil magistrates from the highest to the lowest, and the governor is the highest civil magistrate in a State:

> He is not required to postpone his action until the unlawful assembly ripens into an actual riot. For it is better to anticipate more dangerous results, by energetic intervention at the inception of a threatened breach of the peace, than by delay to permit the tumult to acquire such strength as to demand for its suppression those urgent measures which should be reserved for great extremities. The magistrate has not only the power to arrest the offenders and bind them to their good behavior, or imprison them if they do not offer adequate bail, *but he may authorize others to arrest them by a bare verbal command, without any other warrant;* and all citizens present whom he may invoke to his aid, are bound promptly to respond to his requisition, and support him in maintaining the peace. And a magistrate, *either present or called* on such an occasion, who neglects or refuses to do his utmost for the suppression of such unlawful assemblies, subjects himself to an indictment and conviction for a criminal misdemeanor.

To the same effect I may cite 1 Russell on Crimes, pages 799, 801, 805.

In the light of such authorities, it will hardly be denied that if in truth a breach of the peace, larger or smaller in dimensions, was proceeding at the time and place in question, threatening to swell into greater proportions, the governor had a right to suppress and quell it, and to call others to his aid in doing so.

But the republican party, the President of the United States, and much of the residue of mankind, are threatened with destruction because those whom Governor Kellogg summoned, and those who responded, were soldiers, and soldiers of the United States—"hirelings" they were called. The Senator from Maryland [Mr. HAMILTON] said they were "hired," and withered them by adding that they received only "eight dollars a month." The words do not appear, I believe, in his printed speech; but they were among the liveliest he uttered.

"Hirelings!" But for such "hirelings" there might not now be a Senate Chamber to echo with the eloquence of the honorable Senator from Maryland. But for these "hirelings" we might not now "breathe the free air of a Republic." It is certain that, but for such "hirelings," we should not breathe the air of a free Republic. These "hirelings" have less place to rest their feet than the birds of the air or the beasts of the field. If they remain soldiers they must be somewhere, and wherever they are, south of Mason and Dixon's line, they come betwixt the wind and somebody's nobility. If they doff their knapsacks, and with honorable dis-

charges in their pockets, and wearing the scars received on stricken fields, melt away into society and locate anywhere in one-half the Republic, they are loaded with opprobrium; they are stigmatized with the epithets of "carpet-bagger," "scalawag," "white nigger," and the like. Their lot is hard. They have earned these revilings in recent years. One political party never called soldiers "hirelings" until they were marshaled to trample down a rebellion which lifted its bloody hands to stab the Republic to the heart. It is a curious coincidence that hatred of soldiers blossomed out about the time they were hurrying to the burning battle-fields of the rebellion. It was not always so. The democratic party was once the soldiers' party and the war party. It applauded soldiers in former wars. It sighed for new wars, for Cuba, and for conquest. But this was in "what was once free America"—I quote the words of the Senator from Ohio; it was when slavery needed room to expand. The democratic party applauded soldiers when they dispersed Legislatures, when they thronged and overawed courts, and did other odious behests.

In 1814, when Andrew Jackson ordered a military guard over both houses of the Legislature of Louisiana, when the governor of that State stationed military guards at the doors and shut both houses out of their chambers, believing that Jackson wanted them shut out when in truth he wanted them shut in; when at the same time General Jackson put a *habeas corpus* in his pocket, and drove from his home and his court the judge who issued it, the democratic party glorified Jackson, and made him President.

When a democratic President, a democratic Secretary of War, and a military officer, at the point of the bayonet and the mouth of the cannon, on the 4th of July, 1856, dispersed and humiliated both houses of a Legislature, Congress and the country rang with democratic plaudits. This abominable proceeding fills a page in one of the most odious and revolting chapters in the history of human tyranny and wrong.

Many into whose faces I now look remember the events in Kansas, and the scoffs and taunts with which they were belittled and denied. When violence, intrusion, and outrage, carrying the banner of slavery, stalked high-headed in Kansas, trampling law and right and life under foot, did the democratic leaders and the democratic press apologize for ruffians and homicides? Did the predecessors of these Senators apologize for crime? Oh, no, they would have been as indignant as their successors are, had it been said that they apologized for bloodshed in Kansas. They only sought, as Senators do now, to laugh and sneer the subject out of court; they only sought to cover the naked truth with an eclipse of denunciation, ridicule, and denial. "Bleeding Kansas!"—have you forgotten how that mocking motto flew at the mast-head of democratic papers? "Bleeding Kansas" was the catch-word and by-word then, just as the "Southern outrage business," the "Southern outrage mill" are now. Apology for crime and violence, Oh, no—Oh, no. Border ruffianism in Kansas was denied in this Chamber as southern ruffianism is denied now. It did not receive open, bald apology. The honorable Senator from Ohio, skillful and practiced as he is, would not be so rank and bungling, however he might feel, as to make open apology for brutal violence in his followers. The coarsest instinct would revolt at this—the homage which vice pays to virtue would rebel against it. Gross indeed must be the sense which would not sicken with satiety at the naked indecency of apology for murder unshaded even by a phrase or a blush. Drapery in such cases, is essential to effect.

In 1853 border ruffianism and its diabolical work in Kansas was not the subject of apology more than are White Leagues and masked riders now. Yet we cannot forget the tone of congressional discussions then, nor can we restrain the exclamation how history repeats itself!

Here is a cold record, the annals of Kansas, compiled after the din and horrors it narrates had passed away. Here, and in many another book, it stands recorded that the election preceding the crowning wrong to which I first referred, was controlled almost entirely by residents of Missouri who came into Kansas in large bodies, took possession of the polls, drove away the regularly appointed judges of election, set up others to betray liberty and right, elected to office persons who were not and never had been citizens of Kansas, and committed other atrocities the details of which are too disgusting to relate.

Says the author—

It is estimated that about five thousand Missourians, led on by men claiming respectability, and certainly occupying prominent positions, visited the Territory to take part in this nefarious transaction. The following extract is from the report of the congressional committee:

By an organized movement, which extended from Andrews County in the north, to Jasper County in the south, and as far eastward as Boone and Cole Counties, companies of men were arranged in regular parties, and sent into every council district in the Territory and into every representative district but one. The numbers were so distributed as to control the election in each district. They went to vote, and with the avowed intention to make Kansas a slave State. They were generally armed and equipped, carried with them their own provision and tents, and so marched into the Territory.

Another paragraph in the same report, which gives a detailed statement of the outrages committed at this election, carefully gathered from the examination of witnesses under oath, asserts:

The Missourians began to leave on the afternoon of the day of election, though some did not go home until the next morning.

In many cases when a wagon-load had voted, they immediately started for home. On their way home they said if Governor Reeder did not sanction the election they would hang him.

This unlawful interference has been continued in every important event in the history of the Territory. Every election has been controlled not by the actual settlers, but by citizens of Missouri; and, as a consequence, every officer in the Territory, from constables to legislators, except those appointed by the President, owe their positions to non-resident voters.—*History of Kansas*, by J. H. Gihon, pages 38 and 39.

Let me read two or three lines from a democratic newspaper of that day, the Brunswicker, a Missouri paper:

We learn, just as we go to press, that Reeder has refused to give certificates to four of the councilmen and thirteen members of the house. He has ordered an election to fill their places on the 22d of May. This infernal scoundrel will have to be hemped yet.

The Legislature of Kansas attempted to meet on the nation's birthday, to meet quietly in the two legislative halls, and Colonel Sumner, commanding squadrons of cavalry, commanding a detachment of artillery which trained its guns upon the doors, commanding men whose sabers and bayonets flashed in the sun, entered the building in which the Legislature had met, declared his act the most painful of his life, and then by force compelled the dispersal and degradation of the senate and the house of representatives. So thorough were the preparations, that Army surgeons attended and opened their cases of implements more ghastly than the soldiers' instruments of death.

On the 7th of January, 1857, the day on which the Legislature of Kansas again met, the United States marshal, with troops at his back, arrested seven members of the Legislature, and approbation covered him. On the 15th of July, 1857, Governor Walker, of Kansas, by

proclamation ordered the citizens of Lawrence to desist from acting under their municipal charter, saying that if they did not obey he would use the troops of the United States to compel obedience. All this was the work of democrats, and to criticise it was treason to the party.

At a municipal election here in Washington on the 1st of June, 1857, under a democratic administration, United States marines from the navy-yard fired on a crowd, killing five and wounding seventeen; and we had not even "an investigation into the affairs of the District!"

On the 27th of March, 1859, Governor Cumming, of Utah, protested against United States troops surrounding the court-house during the session of the court; but the heart of a democratic administration beat no response.

In the autumn of 1861 General George B. McClellan, through General Banks, arrested as many as he could of the Legislature of Maryland, Maryland not being a State declared in insurrection; and the democratic party at the first opportunity strove to make McClellan President—President on a peace platform—a platform made by sticklers for the Constitution who hurled the whole constitutional armory at the national authorities then grappling with the rebellion, and assailed Mr. Lincoln with all their hurtling arrows and all their virulent vocabulary. The democratic party always was the keeper of the Constitution. The Constitution all through the war was in the charge of the democratic party North and South; and the northern wing and the southern wing vie with each other now, as they did then, in the zeal with which they keep watch and ward over that sacred instrument!

In the spring of 1854 a man was arrested in Boston for the crime of being black. By the order of a democratic President the Army and Navy swarmed around the spot, and Federal bayonets were thicker than tipstaffs in the court. The district attorney felt called upon to apologize:

> He desired to say that the United States soldiers were here in aid of the marshal to enable him to preserve order in this court and to execute the laws, and that they were summoned here as a part of the *posse comitatus*.

Artillery practice took place in Court Square during the trial, and an army with banners and nodding plumes of the United States, carried a slave from the court to the wharf, and a revenue-cutter and soldiers of the United States steamed with him out to sea.

John Brown was tried before a court of a sovereign State—a scowling court, corraled with Federal bayonets; and the gibbet on which he kissed a child and died, quaked with the tramp of Federal regiments and the rumble of Federal artillery.

Mr. President, the posterity which shall read unmoved the story of a record so crimsoned with blood, so stained with tears, will not be kindled to indignation at De Trobriand and his two companions accosting rioters and bidding them desist.

Yes, soldiers are hirelings; Senators are hirelings; a great body of the American people are hirelings; but men do not forfeit their citizenship or their rights by becoming hirelings, not even by becoming soldiers, especially if they remain true to their oath and their flag.

Soldiers are citizens. Military allegiance exempts soldiers from jury duty; it may exempt them from other duties in given cases; but their uniform does not deprive them of the immunities, the attributes, the rights, nor does it relieve them of the duties of other citizens. De Trobriand in his uniform, was none the less a citizen of

the United States, none the less a citizen of Louisiana, if Louisiana be still, as it was for many years, his residence. Yet, it seems to be assumed, on one side of the Senate, that even if the exigency, in the presence of which Governor Kellogg stood, gave him the right as chief magistrate by verbal command to summon bystanders to quell disturbance, to arrest disturbers, and restore and maintain order, still no right permitted him to do what he did, because those he called to his aid, and who responded, were soldiers.

This distinction between citizens may not have been clear to Governor Kellogg and to those who obeyed his summons. Had they been lawyers and searched the books for such a distinction they might have lost the trail. Had they gone to the common law of England, the broadest page of jurisprudence, they would have found such a distinction conspicuously absent. Before most of them were born, the lord chief justice of England had denied and denounced such a distinction. To show this, I send to the Secretary "Wise on Riots," a book of high authority, and asked him to read the passages marked.

The Secretary read as follows:

DUTIES OF THE MILITARY.

The jealousy which has always been evinced in this country of any approach to military government, was probably the foundation of the erroneous notion in 1780, that soldiers were powerless without the authority of the civil magistrates; and the surprise expressed in 1832, at that part of Lord Chief Justice Tindal's charge which was specially directed to this subject, showed that the error was far from being extinguished. Mr. Justice Holroyd had indeed stated, in Redford *vs.* Birley 3 Starkie N. R., page 101; see also Burdett *vs.* Abbott, 4 Taunton, page 401, *that the military were citizens no less than soldiers;* and intances occurred in the Luddit, disturbances of their acting alone, in accordance with what is unquestionably the law of this country; but never was it so clearly expounded as in the following extract from that charge:—

"And whilst I am stating the obligation imposed by the law on every subject of the realm, I wish to observe, that *the law acknowledges no distinction in this respect between the soldier and the private individual. The soldier is still a citizen, lying under the same obligation, and invested with the same authority, to preserve the peace of the king as any other subject. If the one is bound to attend the call of the civil magistrate, so also is the soldier; if the one may interfere for that purpose when the occasion demands it, without the requisition of the magistrate, so may the other too; if the one may employ arms for that purpose, where arms are necessary, the soldier may do the same.* Undoubtedly, the same exercise of the discretion, which requires the private subject to act in subordination to and in aid of the magistrate, rather than upon his own authority, before recourse is had to arms, ought to operate in a still stronger degree with military force. But, where the danger is pressing and immediate; where a felony has actually been committed, or cannot otherwise be prevented; and from the circumstances of the case, no opportunity is offered of obtaining a requisition from the proper authorities—*the military subjects of the king, like his civil subjects, not only may, but are bound to do their utmost, of their own authority, to prevent the perpetration of outrage, to put down riot and tumult, and to preserve the lives and property of the people.*" (Wise on Riots, 74, 75.)

Mr. CONKLING. There, Mr. President, is the utterance of a great judicial magistrate announcing that citizens, in the military service or not, as preservers of the peace, stand on the same footing; and for more than the lifetime of men now living, such a distinction as is now contended for, has had no existence in Great Britain. Had Kellogg and the soldiers he summoned made search in American law books, their effort would have been scarcely more productive. I send to the Secretary the charge given by Mr. Justice King in the noted case to which reference was made yesterday, and ask him to read the marked passage.

The Secretary read as follows:

Those who love law and order should not shrink or hesitate in striking an honest blow for their protection, when threatened by lawless violence. When such a timid and feeble spirit prevails, the days of the Republic are numbered. This general duty, this universal obligation, *extends to the citizen soldiers who, in common*

with all other members of the community, are reqired to be assistants in the maintenance of the publie peace on the eall of the eivil magistrate. They are subjeet to the same penalties in case of neglect or refusal to appear, as any other citizen summoned by the sheriff. They do not, on such occasions, act in their technical character as military. When assembled, they are but part of the sheriff's posse, and act in subordination to, and in aid of, that officer, who is the true and responsible chief of all forces summoned under his authority. If the soldiers act in any manner not authorized by law, *they are amenable for such aets, not to the military but the eivil law. In brief, as to all rights and authorities, they stand on the same footing with the other citizens summoned by the sheriff*, and composing with them a posse. (Wharton's Criminal Law, sec. 2936.)

Mr. CONKLING. I ask the Secretary to read also an extract from an opinion written on the 27th of May, 1854, by a democratic Attorney-General in reply to a letter from a democratic Secretary of War.

The Secretary read as follows:

These considerations apply as well to the military as to the civil force employed; for the *posse comitatus* comprises every person in the district or county above the age of fifteen years, (Watson's Sheriff, 60,) whatever may be their occupation, whether civilians or not; *and ineluding the military of all denominations, militia, soldiers, marines, all of whom are alike bound to obey the eommands of a sheriff or marshal. The fact that they are organized as military bodies, under the immediate command of their own officers, does not in anywise affect their legal eharacter.* They are still the *posse comitatus.* Opinion of Attorney-General Cushing of May 27, 1856, Opinions of Attorneys-General, volume 6, page 473.

Mr. CONKLING. Mr. President, loud outcry may scare forty million people with the fear that their liberties are in danger from an army of less than five-and-twenty thousand men, scattered in corporal's guards over a continent. This may be. It may be that the three men in blue pantaloons who in New Orleans the other day accosted intruders, trespassers, and wrong-doers, and bade them change their seats from one place in a room to another place in the same room, should have been three other men dressed in other pantaloons. It may be so. Mr. Stoughton, who, although a democrat, can speak like a patriot and a jurist as he is, says he thinks it would have been more strictly regular had Governor Kellogg first called upon soldiers of the State of Louisiana, and they proving inadequate, had called upon soldiers of the United States. It may be so, I do not deny it. As I said before, it is not my purpose to justify Governor Kellogg or those who did his bidding. I do not pronounce him or them right or wrong. It is fair, however, to remind you that if Kellogg needlessly invoked the aid of soldiers, he may have been misled by the action of the democratic assemblage, over which Mr. Wiltz presided. He may have been misled by the fact that with a presiding officer who was an ex-mayor of the city of New Orleans, and who might be supposed to understand something of municipal law, with democrats, or as the honorable Senator from Ohio now baptizes them "conservatives," present in large numbers, acting upon preconsidered deliberation, the troops of the United States had been sent for by committee, employed to quell riot, publicly thanked and cheered for their presence, and told they had prevented the effusion of blood. These proceedings were well calculated to familiarize and impress all with the idea that De Trobriand and his companions were fit men to keep the peace on the occasion. At all events the example tends to shield the soldiers from the charge of turpitude and conscious wrong. I fear Wiltz and his conservative confederates will continue to mislead soldiers. I see that after the occurrence in question, addressing the President of the United States, Wiltz concludes by saying:

And I urgently request and demand that they—

That is, the troops of the United States.

be ordered to restore the house to the position it occupied when they so interfered.

This conservative speaker, this type of the law-abiding spirit of the democratic party, this man who incarnates the inspiration around him, even now, after the great organs of the party have joined in a chorus of denunciation of military interference, sends up to the President a summons to march the military forces of the United States into a legislative hall and reseat him, Wiltz, that he may again trample on the laws and the constitution he has sworn to support.

I have said, and I repeat, that I am not trying the facts, in all their aggravations and mitigations, of the particular case before us. The evidence is not sufficiently here. I am looking only far enough to see whether the Senate and the country need go into paroxysms over the act of one State official, and of three other men enlisted or commissioned in the service of the United States. I am looking far enough to see whether it is really true that "since the separation of the Colonies from the mother country," never did the American people stand in the presence of a crisis so awful; I do not stop to quote the words of the Senator from Delaware, but I give the substance of one of his statements. I am inquiring far enough to see whether it is true that the pillars of the temple are about to crumble, that civil liberty is about to vanish, that the great Republic of the world is about to fold its tents like the Arabs and as silently steal away.

Mr. President, I have done with the one scene just enacted in the tragic drama of Louisiana. I turn to the history of that ill-fated State for the last few years, as a theme better worthy the thought of the Senate than the fracas in the legislative hall.

What is the excuse of the disturbers of Louisiana? What is the apology for the unending commotion in which she has been kept? The plea was made by the Senator from Ohio. It is that Kellogg was not in truth elected but was falsely counted in. Suppose he was, does that justify the nameless horrors which have stained the annals of Louisiana?

Other States have known deeper wrongs than these, but they did not resort to the blade, the bullet, and the torch. New York has known deeper wrongs than these. It is an open secret now that in 1868 John T. Hoffman was falsely counted into the office of governor when the people had elected John A. Griswold. The count was falsified, by forgery, more than thirty thousand in two counties. This was known then, better known than it is now that Kellogg did not receive a majority of the votes of Louisiana in 1872. Who did it? The managers of the democratic party; and they seated in the Legislature, year after year, men whom the people had voted down. The same *régime* made the courts, and made them corrupt. They emitted forged naturalization papers by tens of thousands. They made the returning boards, and made them corrupt. They made the inspectors of election; and the inspectors polluted and debauched the ballot-box. They divided the chief city of the State by suddenly redistricting it on the eve of election in such wise as to bisect blocks and houses, so that men domiciled in the same house could vote and repeat in different election districts. Wielding usurped executive and legislative power, they plundered the treasury by the most colossal robbery of modern times. By such astounding means, a political party for years dominated a State of five million people, and held it by the throat. They made taxes, assessments, tributes, and exactions, the bribes and the penalties of political submission.

What did we do? Not ruthless violence. We did not scourge, kill, and burn. We did not butcher men, women, and children, by the light of their blazing homes. Finally, we did not seize the capital

city of the State, barricade its streets, shoot down its police, and erect a reign of terror on the ruins of law. We persevered in peaceful remedies.

We asked Congress for a constitutional enactment to break the hold of organized violence and fraud on the ballot-box, that citizens might vote, and that their votes might be counted. How was our prayer received in this Chamber? How was it received elsewhere? We were loaded with imprecations and maledictions. We were blasted with constitutional anathemas. The whole body of the democracy in this Chamber heaped abuse upon us. Those who sat mute in these seats a day and a night, while they were pelted with a storm of monstrous and unjust accusation, have not forgotten the history or the cost of this legislation. We heard the same old argument to which we had listened during the war. Violation of the Constitution, military despotism, arbitrary power, State rights, centralization, and all the worn formula in which Lincoln and Grant, and the republican party have been railed at whenever treason, anarchy, or deviltry has been put down. But nobody apologized, right out plain, for fraud and ballot-box stuffing. We all remember that nobody then, any more than now, in so many words justified thugs, repeaters, or forgers. Everything men could do to prevent the passage of the act was done, but we worried through, and for the first time in years New York had an election approaching fairness A leading democratic paper called upon the populace to arm and "pitch the officers of the election into the river." Other like papers spoke in like strain, but rioters have a wholesome fear of the beak and claw of national power, and so they did not resort to force, and citizens were allowed to vote, and the votes were counted with an approach to fairness. Such were our modes of redress.

What has been the remedy of those deeming themselves similarly aggrieved in Louisiana? The right to vote has been as free there as in New York—I repeat again that every citizen of the South has had the right to vote, and all white men could vote freely. But, as sparks fly upward, discontent has run into violence, and Louisiana has been kept rocking, and sea-sick in the throes of unending revolution. Events have been directed by men as rash and insane in counsel as the maniacs roaring at the doors of the French Assembly, who, in the name of humanity, flooded France with blood, and, in the name of religion, would have dethroned the Monarch of the skies. Murder, persecution, and barbarous hate, have preyed upon the poor and the defenseless. All seasons have been seasons of terror; all localities have been the abodes of fear. Thirty-five hundred murders and woundings in eight years, says Sheridan, "for political sentiments!"

Search the annals of bigotry and intolerance, read the tearful story of "man's inhumanity to man," and where in modern times can you find an instance of such God-daring and man-hating malignity as this statement uncovers? Louisiana, including her chief city, has been for years a dark and bloody ground, from which victims by the thousand have been carried to the grave.

Finally, in September, under formal proclamation from Penn, who ran as the democratic candidate for lieutenant-governor, embodied revolution shot down citizens and police, and seized the government, archieves, and property of the State.

That commerce and industry have languished in the midst of such commotion, that securities have lessened in value, as the Senator from Ohio says, that rents have depreciated, that commercial prostration

has ensued, are matters of course; and I ask the Senator from Ohio, should his great State become for years the theater of lawless violence, with open defiers of the government holding bloody grapple for the mastery with the constituted authorities county by county, making life everywhere insecure, and making sloth the chief industry of the State, how long would it be before securities and property in Ohio would depreciate, how long before commercial and industrial prostration would ensue?

If commercial and industrial prostration were the only evil involved in this bloody business, recreant indeed would be that son of the great State which honors me with a seat upon this floor, who could be laggard in anything for the pacification of the South. Show me a mode to pacify the South, and, no matter what party opposes it, my vote it shall have. No party can live that stands in the way of the prosperity of the South. The republican party has not an aspiration, an attribute, a conviction, a prejudice, a prayer, which would not be outraged by hostility to anything which would really tranquilize the South.

But, Mr. President, bluster and revolution will not pacify the southern people; bloodshed will not make friends or make wealth; incessant denunciation of the civil authorities will not harmonize the South; exaggerating, fomenting, distorting every evil, real and imaginary, under which the discontented and the slothful are laboring, will bring no solid lasting advantage to the southern people, white or black. Had I the power to make my voice heard and believed in every southern community, with all the sincerity of my heart, wishing them nothing but good, I would say: "Build, mend, heal, sow, plant—in short, go to work; do not feel above honest toil, quit idling and wrangling over politics; let a fair day's wages for a fair day's work, and exact and equal rights for all, be the rule; dwell together in Christian charity, and all will soon be well."

No such gospel now prevails.

The honorable Senator from Ohio complains that the CONGRESSIONAL RECORD is a national police gazette. It should not be so; let us reform it altogether. Dismount masked riders, disarm banded marauders, disband White Leagues, disown all toleration of violence, discontinue the bloody assizes of the democratic party, and the CONGRESSIONAL RECORD will cease to be a national police gazette.

Mr. President, I have been speaking of history—the history of Louisiana. It is the statesman's task to turn history into philosophy and prophecy. The modes adopted in New York and Louisiana are widely unlike; there is a broad difference between them. Whence comes this difference? In what is it rooted? Four million black men are the great factor in the problem. When the fate of the nation trembled in the wavering balances of war, they struck no blow at the Republic; they stood by the flag; they prayed for it; they toiled for it; they fought for it. The American people said they should be free and be citizens; and the American people imbedded their will in the bulwarks of the Constitution. The nation forgave its enemies, and left the ballot and the right of self-government to them. But the same nation, at the same time, conferred the ballot and the right of self-government on those, who, galled by centuries of oppression, had still been true in the supreme hour, and had won their liberty and their citizenship on gory fields of battle. Congress did not do this. The people did it. The people in the States, speaking through their State Legislatures, put manhood, citizenship, the ballot, and equal rights for black men, into the Constitution.

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There stand the amendments of freedom! The nation is for them; civilization is for them; humanity is for them; God is for them; and political parties and revolutionists shall not prevail against them. A great body of men in the land is not for them, but against them. A great body of men in the land will not submit to them. Social equality is no part of them, but hate and pride rebel against them. This is the moral rebellion of to-day. Drop it in good faith, man-like, and the South will be tranquil in half a year.

Mr. HOWE. In sixty days.

Mr. CONKLING. My friend from Wisconsin says "in sixty days." I believe so. The changed condition of society, the want of education, and other considerations, would for a time require more care and forbearance than other more settled and favored communities are obliged to observe; but a brief period, whether it be as my honorable friend suggests, sixty days, or longer—a brief period, improved in good faith, and good sense, and all will be well.

This is the issue for the South. I fear for awhile it will remain the issue. Those most concerned can untie the knot. If they are imprisoned in commotion and disorder, they carry the key to their own prison and can unlock it if they will, and when they will. Those who have their confidence can persuade them to do it. Here is the solution—an easy, honorable, effectual solution. It will not be brought about by stirring the smouldering flame that burns upon a charnel-stone. It will not be brought about by exasperating ancient animosities or reviving sectional schemes. It will not be gained by cloaking or denying the truth. It will not be wrought out by evasions and perversions, worse than apologies for wrong. It will come, when it does come, from an honest, manly acquiescence in the modes and the spirit of free majorities—the best system of government man has known,—although like everything human it is imperfect, like everything human it sometimes falls short of exact and perfect justice.

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